UNITED STATES DISTRICT COURT

IN THE DISTRICT OF IDAHO

SAINT ALPHONSUS MEDICAL CENTER - NAMPA, INC., TREASURE VALLEY HOSPITAL LIMITED PARTNERSHIP, SAINT ALPHONSUS HEALTH SYSTEM, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC., Plaintiffs, vs. ST. LUKE'S HEALTH SYSTEM, LTD., and ST. LUKE'S REGIONAL MEDICAL CENTER, LTD., Defendants.	Case No. 1:12-cv-00560-BLW Bench Trial **Witnesses:** **Lisa Ahern** **Thomas S. Patterson** **Harold V. Kunz** **Greg Sonnenberg**
FEDERAL TRADE COMMISSION; STATE OF IDAHO, Plaintiffs, vs. ST. LUKE'S HEALTH SYSTEM, LTD.; SALTZER MEDICAL GROUP, P.A., Defendants.	Case No. 1:13-cv-00116-BLW

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

before B. Lynn Winmill, Chief District Judge

Held on October 18, 2013

Volume 17, Pages 3140 to 3397

Tamara I. Hohenleitner
Idaho Certified Shorthand Reporter No. 619
Registered Professional Reporter
Certified Realtime Reporter
Federal Certified Realtime Reporter

United States Courts, District of Idaho
550 West Fort Street, Boise, Idaho 83724 (208) 334-1500

A P P E A R A N C E S

FOR PLAINTIFFS SAINT ALPHONSUS MEDICAL CENTER-NAMPA, INC., SAINT ALPHONSUS HEALTH SYSTEM, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.

Keely E. Duke
DUKE SCANLAN & HALL, PLLC
1087 W. River Street, Suite 300
Boise, ID 83707

David A. Ettinger
HONIGMAN MILLER SCHWARTZ AND COHN LLP
2290 First National Building
660 Woodward Avenue
Detroit, MI 48226

FOR PLAINTIFF U.S. FEDERAL TRADE COMMISSION

Peter C. Herrick
U.S. FEDERAL TRADE COMMISSION
500 Pennsylvania Ave., N.W.
Washington, DC 20580

J. Thomas Greene
U.S. FEDERAL TRADE COMMISSION
600 Pennsylvania Ave N.W.
Washington, DC 20580

Henry Chao-Lon Su
U.S. FEDERAL TRADE COMMISSION
601 New Jersey Ave., N.W.
Washington, DC 20001

A P P E A R A N C E S (Continued)

FOR PLAINTIFF STATE OF IDAHO

Eric J. Wilson
GODFREY & KAHN, S.C.
One East Main Street
Suite 500
PO Box 2719
Madison, WI 53701

Brett T. DeLange
OFFICE OF ATTORNEY GENERAL, STATE OF IDAHO
954 W. Jefferson, 2nd Floor
Boise, ID 83720-0010

FOR PLAINTIFF TREASURE VALLEY HOSPITAL

Raymond D. Powers
POWERS TOLMAN FARLEY, PLLC
PO Box 9756
Boise, ID 83707

FOR DEFENDANTS ST. LUKE'S HEALTH SYSTEM, LTD. AND ST. LUKE'S REGIONAL MEDICAL CENTER, LTD.

Jack R. Bierig
Ben J. Keith
Scott Stein
Charles Schafer
SIDLEY AUSTIN
One South Dearborn
Chicago, IL 60603

J. Walter Sinclair
STOEL RIVES
101 S. Capitol Boulevard, Suite 1900
Boise, ID 83702

FOR DEFENDANT SALTZER MEDICAL GROUP

Brian Kenneth Julian
ANDERSON JULIAN & HULL, LLP
PO Box 7426
Boise, ID 83707

I N D E X

PLAINTIFFS

W I T N E S S E S

DEFENSE ST. LUKE'S HEALTH SYSTEM

W I T N E S S E S

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PROCEEDINGS

October 18, 2013

******COURTROOM OPEN TO THE PUBLIC******

THE CLERK: The court will now hear Civil Case 12-560-S-BLW, Saint Alphonsus Medical Center, Nampa, Inc., versus St. Luke's Health System for Day 17 of a bench trial.

THE COURT: Good morning, Counsel.

I believe, Counsel, just to kind of keep the record straight, I did conclude last night after reviewing the portions of the deposition and also the exhibit itself that I just simply didn't see the relevance of Exhibit 2104, so I'm going to exclude that for the record.

Now, I think we're ready to proceed. Mr. Schafer.

MR. SCHAFER: Thank you, Your Honor. Defendants call Lisa Ahern.

THE COURT: Ms. Ahern, would you please step before the clerk and be sworn as a witness and then follow her directions from there.

LISA AHERN,

having been first duly sworn to tell the whole truth, testified as follows:

THE CLERK: Please take a seat in the witness stand.

Please state your complete name and spell your name for the record.

THE WITNESS: My name is Lisa Ahern, L-I-S-A A-H-E-R-N.

THE COURT: Mr. Schafer, you may examine the witness.

MR. SCHAFER: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. SCHAFER:

Q. Good morning, Ms. Ahern.

A. Good morning.

Q. What do you do for a living?

A. I am a financial consultant, analyst, and advisor.

Q. Who is your employer?

A. I work for AlixPartners, LLP.

Q. What does AlixPartners, LLP, do?

A. We're a professional services firm. We provide a range of financial consulting, management consulting, and IT consulting services.

Q. What's your position at AlixPartners?

A. I am a managing director, which is our equivalent to a partner, in the Financial Advisory Services Department.

Q. And how long have you been a managing director of that department?

A. Since January of 2005.

Q. Can you please describe what, if any, healthcare-related work you've done as a managing director

in the Financial Advisory Services group.

A. Sure. My work frequently focuses on the advising of healthcare clients. In particular, I focus on analyses of healthcare organizations joining together in potential transactions. So I'm frequently analyzing both historical and projected financial data, both for hospitals, health systems, as well as for physician practices. Oftentimes, I'm looking at the staffing of departments within organizations, be it hospital departments, from a clinical or nonclinical standpoint, but also physician -- recruiting physician plans.

Q. Have you had any recent opportunities to speak on the types of issues you just discussed?

A. I have. I was recently invited by the American Health Lawyers Association to serve as the financial expert on a panel on the topic of antitrust issues and efficiency matters. I was on that panel with counsel, as well as members of the Federal Trade Commission.

Q. Ms. Ahern, have you worked on projects where you focused on the acquisition or recruitment of physicians or physician practices by health systems?

A. I do, yes. I'm often involved in -- the analysis that I'm doing is often focused on, in part, physician recruiting and physician practices.

Q. Ms. Ahern, where did you work before joining

AlixPartners?

A. Prior to AlixPartners I was with Ernst & Young, and before Ernst & Young with Price Waterhouse in the days before it was PricewaterhouseCoopers.

Q. Could you please describe your educational background.

A. Sure. I have a bachelor of science degree in economics from the University of Iowa. I -- my degree is with honors and distinction, and my undergraduate honors thesis was in the field of health economics. I also have a master's of business administration degree, also from the University of Iowa, with an emphasis in corporate finance.

Q. What percentage of the work that you have performed at AlixPartners involves healthcare-related issues?

A. Well, it varies, but I would say over the last five years it's been 50 to 75 percent of my time, and very frequently it's 100 percent of my time.

Q. Over the course of your career, how many engagements have you worked on where the focus of the matter involved a healthcare entity?

A. I haven't tallied that up, but I would venture a guess of approximately 50 different engagements involving healthcare and life sciences-type companies.

Q. Have your engagements involved financial analysis

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of hospitals, as well as physicians and physician groups?

A. Yes.

MR. SCHAFER: I would like to ask Mr. Chase to put your resumé up on the board.

And Your Honor, I also have a binder of documents for Ms. Ahern if I could have -- hand it to Mr. Metcalf.

THE COURT: Yes.

MR. SCHAFER: Your Honor, the resumé is Trial Exhibit 2374.

BY MR. SCHAFER:

Q. If we could focus on the portion of your resumé, Ms. Ahern, that's entitled, "Examples of Healthcare Experience." I just want to look at maybe two of these examples. If you could please describe your work related to the first bullet point in that section.

A. Sure. On this particular matter I served as the expert and directed a team of AlixPartners individuals in the quantification of efficiencies that were to be achieved in a merger of two healthcare organizations in the eastern portion of the United States. One of the two organizations was a healthcare system. It involved several hospitals and ownership of several physician practices. The second party to the potential transaction was a standalone hospital, also which employed several physicians.

And my work there involved the analysis, together

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with administration and the chief medical officer, of the consolidation efforts that could occur and the resulting cost savings associated with those consolidations or integrations.

In addition, we looked at the financial viability of the standalone hospital system -- or not system, the hospital, the standalone system -- hospital. And, of course, that involved the analysis of all that hospital's financial records, be that historical information or their projection.

Q. Let's look at the second bullet point on the page. Can you describe your work on this matter?

A. Yes. In a similar situation, this was a potential merger between two hospitals in the southern portion of the United States. This was very focused on clinical integration, and so our work was very specifically with the physicians that were employed by both hospitals, as well as affiliated with both hospitals, in order to assess the benefits, financial benefits, of clinical integration, as well as nonclinical integration.

Q. And are there other healthcare matters on which you have worked that do not appear on this list?

A. There are. I'm -- this is a list of examples I'm currently engaged in, and many matters similar to the ones that I just described.

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Q. In this matter, what were you requested to do on behalf of the defendants?

A. I was asked -- excuse me -- I was asked to conduct two different analyses. One was to look at the analysis put forth by Saint Alphonsus related to the claims regarding their Nampa facility and the alleged lost referrals based on the Saltzer and St. Luke's transaction. I have referred to that analysis as the "Impact Analysis."

Secondly, I was asked to evaluate the impact on Saltzer and its physicians if Saltzer were made to be divested from St. Luke's, and I have referred to that as the "Unwind Analysis."

Q. Just to be clear, these two analyses are -- they are separate and unrelated; is that correct?

A. That's correct.

Q. And did you prepare and submit any expert reports on these issues?

A. I did. I issued an initial expert report and then a reply report to plaintiffs' expert, Mr. Reed Tinsley.

MR. SCHAFER: Your Honor, we have basically, as we just explained, two modules for Ms. Ahern's exam. The first will be AEO for everyone but Saint Alphonsus, and the second one will be AEO for everyone but St. Luke's-Saltzer, so we may have to do some shifting. But it will be -- they're, roughly, you know, an hour in length.

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THE COURT: Starting now?

MR. SCHAFER: I think we might need to exclude the non-Saint Al's people now.

THE COURT: All right. At this time I'll direct everyone not associated with Saint Al's or otherwise advised that they can remain in the courtroom because they've signed the court's protective order in this matter will be directed to leave the courtroom.

******COURTROOM CLOSED TO THE PUBLIC******

BY MR. SCHAFER:

Q. Okay. Ms. Ahern, let's start with your opinion as to Saint Alphonsus Nampa's alleged loss of Saltzer referrals due to the affiliation between St. Luke's and Saltzer. Can you summarize that opinion for the court?

A. Yes, I can. It's my opinion that based on the analysis and information that I've seen, including testimony and document review, that there is no support for or evidence that the transaction between St. Luke's and Saltzer would render Saint Alphonsus Nampa unable to effectively compete with St. Luke's.

Q. And can you describe the primary information you reviewed and analyzed in order to come to that conclusion?

A. Yes, I can. There was an analysis put forth by Mr. Lannie Checketts, the CFO at Saint Alphonsus Nampa, that we heard him testify about here at trial a couple of weeks

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ago at this point. I analyzed his work. I also reviewed portions of Professor Haas-Wilson's analysis as it related to referral patterns. And, of course, I have listened to and read the testimony Mr. Checketts, Mr. Keeler, and others who had information on that topic.

Q. And can you describe, generally, Mr. Checketts' impact analysis?

A. Sure. Generally speaking, Mr. Checketts' analysis had four principal parts. First, he set forth a series of Saint Alphonsus Nampa income statement projections that spanned the fiscal years 2013 through '16. That is referred to in his analysis as the "Current State Projections." So, essentially, what he did was put forth projections that had already been prepared in the October 2012 time frame that were forward-looking and called that the current state or what Saint Alphonsus Nampa would look like but for his asserted losses associated with referrals due to Saltzer.

Secondly, he then quantified an estimate of the impact of the referral losses due to the St. Luke's-Saltzer transaction. So he has gone through and individually, by departments, so to speak, made assumptions about referral losses that Saint Alphonsus Nampa anticipates.

Third, he analyzed and put forth revenue loss assumptions related to the Treasure Valley Surgery Center and, specifically, Saint Alphonsus Nampa's ownership in that

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facility, as well as included some additional expenses related to Pediatrix, which is a third-party entity that he asserted needed to be hired to take over some of the referral losses assumed due to Saltzer.

Ultimately, his conclusion subtracts the estimates that he has made for referral losses from what he called "the current state of Saint Alphonsus Nampa." So what he has essentially done is derived an operating income, which, in fact, he projects to be a loss for Saint Alphonsus Nampa, based on -- excuse me -- the estimate of referral losses.

From that operating loss, he has quantified two different areas of asserted FTE or full-time equivalent cuts that would be necessary. The first set of cuts relates to -- directly, very directly -- to what he has assumed in terms of losses of referrals. So to the degree Saint Alphonsus Nampa is allegedly going to lose net revenue, they would also, then, cut some employees in order to be able to compensate for that revenue.

And then, secondly, he has included another cut of full-time equivalents related to achieving a desired 2 percent margin.

Q. Before we talk through each of these specific areas of the impact analysis, can you tell the court what time period is covered by that analysis?

A. Yes. The projections, as I indicated -- excuse

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me -- relate to the fiscal year '13 through '16 time period. His analysis in terms of losses relates to fiscal year '14 through '16.

Q. So are any of the alleged losses purporting to measure actual losses?

A. No. The entire analysis is a projection.

Q. And what information did Mr. Checketts look at in attempting to project referral losses?

A. Principally he looked at the fiscal year 2012 admissions data and financial data at Saint Alphonsus Nampa.

Q. And what is your understanding of the ultimate conclusion of the impact analysis?

A. Ultimately, he concluded that by fiscal year '16 there would be a need for approximately 140 full-time equivalent employee cuts.

Q. Based on your review and analysis of the impact analysis, do you agree with Saint Alphonsus Nampa's conclusion that the affiliation between Saltzer and St. Luke's will be, quote, crippling, unquote, to Saint Alphonsus Nampa?

A. No, I don't. Mr. Checketts was able to derive his conclusions based on very aggressive assumptions. In fact, he assumed the maximum loss, 100 percent in most instances, of referrals being lost from Saltzer physicians.

Q. Let's discuss some of your specific critiques of

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these impact analyses. I believe you indicated that the starting point of the impact analysis was Saint Alphonsus Nampa's income projections for 2013 through 2016. Is that right?

A. That's correct.

Q. And can you please describe that aspect of the impact analysis.

A. Sure. What's shown here on the screen is a snapshot of Mr. Checketts' summary of his analysis, which is two pages. And pulling forward here, the very first, or the top section, which he has labeled the "Current State." And this sets out the projections, as I mentioned, from fiscal year '13 through '16, again, that had been created in the fall of 2012.

And just for sake of getting our bearings, if you look at the far-right column, which is the projection for fiscal year 2016, the projected net revenue for the Nampa facility is approximately $116 million. So that $115,966 on the top line is nearly $116 million.

From that, certain operating expenses have been projected to derive, then, a bottom line, again, focusing on fiscal year '16, of a projected operating income of approximately $6.3 million.

Q. And what role do Mr. Checketts --

THE COURT: Counsel, for the record, does this

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demonstrative have an assigned exhibit number?
MR. SCHAFER: 5123, Your Honor.
THE COURT: All right. Thank you. Go ahead and proceed.
BY MR. SCHAFER:
Q. Ms. Ahern, what role do Mr. Checketts' current state projections play with respect to the rest of his impact analysis?
A. It's the starting point for his analysis, so this is where he starts and makes reductions for the asserted Saltzer referral losses.
Q. And what is the Saint Alphonsus Nampa fiscal year-end?
A. It ends June 30th of each year.
Q. So fiscal year 2013 already ended this past June 30th?
A. That's right.
Q. How did the projections utilized by Mr. Checketts for fiscal year 2013 compare against the actual financial results for Saint Alphonsus Nampa?
A. Well, information, financial information, was produced by Saint Alphonsus Nampa through the first half of their fiscal year '13, so that would be through December of 2012.
And, in particular, here is an excerpt from one of

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the Saint Alphonsus President's Council's documents related to the six months through December 2012. And the highlighted section here is indicating that the year-to-date operating income -- so this is the actual -- was a net loss of nearly $200,000 versus a budgeted profit of nearly $1.4 million. So they were significantly under projection.
THE COURT: Counsel, was that for FY13?
MR. SCHAFER: Yes, Your Honor, that was the first six months of fiscal year '13, which was the information that we received in discovery.
THE COURT: Now, wait, the first six months of FY13, which would have ended December 31st, 2012?
MR. SCHAFER: Yes.
THE COURT: All right. Thank you. Go ahead.
THE WITNESS: In putting that text that we just saw into numbers, the first half of fiscal year '13, again, Your Honor, that ended December 31st, 2012, was a generation of operating revenues of approximately $45 million, and, again, that operating profit, which was actually a loss of approximately $200,000, that was a negative operating margin of nearly a half a percent.
BY MR. SCHAFER:
Q. And what did the current state projections relied upon by Mr. Checketts report as the projected operating margin in fiscal year '13?

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A. In fiscal year '13, the set of current state projections utilized by Mr. Checketts projected a 2.8 percent positive margin, so there was a swing of approximately 3.2, 3 and a half percent between what they had projected and what they actually achieved.
Q. And do you know whether Mr. Checketts is aware of Saint Alphonsus Nampa's fiscal year 2013 underperformance relative to his projections?
A. Yeah. He is aware of it. He testified both in his deposition and then here in trial with regard to the fact that fiscal year '13 had performed at a negative margin.
Q. And how does Saint Alphonsus Nampa's underperformance affect the impact analysis?
A. Well, as I mentioned, one of the FTE cut assumptions that Mr. Checketts has made is the number of employees that would need to be eliminated based on the desired achievement of a 2 percent margin. In this case, we can see for the first half of fiscal year '13, they weren't achieving 2 percent on their own, so why he would find it appropriate to include employee cuts associated with a positive margin is not supported.
Q. Did Mr. Checketts adjust his analysis for this underperformance in 2013?
A. No, he didn't.

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Q. How might he have done so?
A. Well, one way for him to have achieved that would have been to not include the FTE eliminations associated with getting Saint Alphonsus back up to a 2 percent margin.
Q. And can you please walk the court through an illustration of how Saint Alphonsus Nampa's underperformance in fiscal year 2013 affects the impact analysis.
A. Sure. This is an illustration of if we were to annualize those fiscal year '13 numbers, so, still assuming an operating loss, the same percentage of .4 percent. The impact analysis logic or methodology would be to take the operating revenue for that time period, so in this instance nearly $91 million, it multiplies that by the desired 2 percent margin to achieve a desired 2 percent operating profit of 1.8 million.
What Mr. Checketts does, then, is compares that 1.8 million desired income against actual operating profit of the $400,000 loss and says that the variance or the amount you need to actually pull yourselves up from the $400,000 loss is a total of 2.2 million. So that's simply the difference between a negative $400,000 figure and a positive $1.8 million number.
From that desired operating margin, then, he takes the average labor and benefit of what Saint Alphonsus Nampa pays employees of $75,000, and that's in fiscal year 2013,

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divides that average labor amount into the $2.2 million to derive what he calls the FTEs cut to achieve a 2 percent margin. So in this illustration, Mr. Checketts' methodology would eliminate 23 full-time employees just simply based on pulling themselves back up to a desired margin.

Q. I believe you said "23 full-time employees"?

A. I'm sorry, 29.

Q. I thought that's what the slide showed.

What is your opinion regarding the 2 percent desired margin contained in the impact analysis?

A. Well, the 2 percent desired margin is in excess of what they've actually been able to achieve in at least three of the last five years.

Q. Does the fact that Saint Alphonsus Nampa missed its fiscal year 2013 projections tell you anything about the projections for fiscal years 2014 and later?

A. Typically, projections, as you would probably guess, are based on year-over-year performance, so if a projection is made for fiscal year '13 in the fall of 2012, as I mentioned, to the degree that it's significantly overstated, more than likely that cumulative effect will flow through to the future years. So I would imagine that fiscal years '14 through '16 are likely overstated, as well.

Q. And you mentioned that Saint Alphonsus Nampa had missed that 2 percent margin or been under that 2 percent

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margin in three of the last five years. Did you perform an analysis of Saint Alphonsus Nampa's historic performance?

A. I did. I have a demonstrative here that will show. Since fiscal year 2008 through the first half of fiscal year '13, three of those time periods have had either a break-even or a negative operating loss. So the fiscal year '09 break-even numbers, fiscal year '10, there was actually a loss of 1.4 percent, and then, again, the first six months of fiscal year '13 was a loss of .4 percent.

Q. And in the most recent periods that Saint Alphonsus Nampa recorded an operating loss, fiscal year 2010 and the first half of fiscal year 2013, are you aware of whether Saint Alphonsus Nampa eliminated any FTEs on the basis of not having achieved that desired 2 percent operating margin?

A. I'm aware that they did not. In fiscal year 2010 Mr. Checketts testified to the fact that they had not eliminated employees for that reason, and I've seen no evidence or heard any testimony with regard to any eliminations in fiscal year 13 for that reason.

THE COURT: Ms. Ahern, is the average margin, operating margin, during those years roughly 2 percent? I mean, I haven't done the math, but it would seem to me that it would be probably in the order of more like 3 percent.

THE WITNESS: I haven't done that math, either,

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but it looks like that would be the case.

THE COURT: All right.

All right. Mr. Schafer.

BY MR. SCHAFER:

Q. Ms. Ahern, you were here in the courtroom and you heard Mr. Checketts testify that Saint Alphonsus Nampa needs that 2 percent operating margin in order to continue to make investments and improvements in its plan and facilities. Did you hear that testimony?

A. I did, yes.

Q. Did Saint Alphonsus Nampa's inability to achieve a 2 percent margin in three of the last five years stop it from making investments and improvements?

A. No. As I understand it, there has been approximately a $30 million investment made in the Nampa Health Plaza within the last couple years and a request, at least, for another approximately $20 million to continue the next phase of that project.

Q. Ms. Ahern you indicated --

THE COURT: Let me just inquire. Typically, the idea of having an operating margin is probably a good -- I mean, in your consulting work with other hospitals, that presumably is a goal that even a nonprofit should have; correct?

THE WITNESS: Absolutely.

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THE COURT: Okay. But I'm also going to guess that because of economic changes in the community in which the hospital serves, external factors, including federal regulations that may change, problems with recruiting, any number of things that can happen from year to year, probably means that that targeted operating margin of whatever percent, say 2 percent in this case or 3 percent for another facility, is rarely going to be spot-on. I mean, you will not year to year, so it has to be an average.

Isn't that fair to say that in some years when it drops, then you're going to have to make some adjustments perhaps to try to get it up; other years you may have a surplus, so the next year you might lower rates or do other things to try to maintain the operating margin?

So I'm curious would an institution, a hospital, typically be expected -- when they have one or two years of dropping into negative territory in terms of operating margins -- be expected to immediately start laying off people, or do they look more for long-term trends?

THE WITNESS: It certainly depends on the facts and circumstances of the particular situation, but generally speaking, I don't see hospitals or health systems laying off this number of people just because they have a year that isn't up to their goal.

THE COURT: All right. Okay.

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Mr. Schafer, go ahead.

MR. SCHAFER: Thank you, Your Honor.

BY MR. SCHAFER:

Q. Moving on, Ms. Ahern, to the second section or step in the impact analysis, which I believe you testified was Mr. Checketts' estimate of the impact of potential lost Saltzer referrals; is that right?

A. Correct.

Q. Can you describe that aspect of the impact analysis for the court?

A. Sure. So, again, here is Mr. Checketts' analysis, and I am pulling forward here the section that's titled the "Estimated Saltzer Referral Loss." You can see these are all negative numbers. This is -- the basis here is that Mr. Checketts has projected, based on a series of loss assumptions, net revenue changes at Saint Alphonsus Nampa. So, again, for sake of ease in looking at numbers, the projected year fiscal year '16, he has asserted a net revenue loss of approximately $21 million.

After reducing expenses, including -- you can see the top expense here, which is "Labor," of nearly $7.4 million, and that is, in fact, the FTE cuts he asserts -- he derives an operating income, just for related to the Saltzer portion of the lost business, of negative $7.7 million in that particular year.

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Q. And what specific inpatient losses does Mr. Checketts assume in his analysis?

A. And by the way, this chart here does represent both inpatient and outpatient on a combined basis.

The inpatient referral assumptions that Mr. Checketts made are that 100 percent of the historical family practice admissions made by Saltzer practitioners would be lost. He makes that same 100 percent loss assumption related to Saltzer pediatricians with a small carve-out for certain newborn visits.

He then assumes 100 percent of historical admissions of Saltzer patients by Saint Alphonsus Nampa hospitalists would be lost, and that results in a 57 percent decrease to overall hospitalists' admissions at Saint Alphonsus Nampa.

Then he's assumed a 60 percent reduction in the historical admissions or volume of the former Saltzer orthopedic surgeons who are now with Saint Alphonsus Nampa.

And then, finally, 100 percent assumption related to lost referrals to Dr. Ballantyne, a general surgeon at Saint Alphonsus Nampa, which results in approximately 13 percent of Dr. Ballantyne's overall business.

Q. And those are the inpatient assumptions. What outpatient losses does Mr. Checketts assume?

A. Similar to the inpatient referrals, he has assumed

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100 percent historical loss of Saltzer physician outpatient referrals. Again, the 60 percent loss in volume for the former Saltzer orthopedics -- again, those are the surgeons who are now at Saint Alphonsus Nampa -- from an outpatient standpoint. And then the same 100 percent loss associated with outpatient procedures performed by Dr. Ballantyne, the general surgeon.

Q. With respect to both inpatient and outpatient, how did Mr. Checketts derive the value of these alleged lost referrals?

A. So a couple slides ago we had the fiscal year 2016 was showing approximately a $20 million loss in revenues. What he did was took the revenue that had been generated by Saltzer physician activity at Saint Alphonsus Nampa in fiscal year '12 and multiplied those amounts by these assumed referral loss assumptions.

Q. And the court has heard some testimony thus far about the difference between two fields in Saint Alphonsus Nampa's data, one for an admitting physician and one for a PCP. Can you describe the difference between those two fields?

A. Sure. The admissions data that's been produced by Saint Alphonsus contains a series of fields, one of which is titled "Admitting Physician," and that represents literally the physician who is going to make the admission of the

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patient at the hospital.

The PCP identifier or field is the referring or the physician who is the primary care physician of that patient. So the PCP may not be the individual who is actually admitting the patient to the hospital.

Q. Do you have an opinion as to whether one or the other of those fields is more appropriate to use in determining potential lost referrals from Saltzer?

A. I do. There -- the admitting physician field, in my opinion, is inappropriate for use, based on the fact that this is a referral analysis. Whether or not the patient was admitted by a particular physician is really not the underlying necessary component to analyze in terms of where the patient referral came from.

Q. And is there -- are there any other reasons why the use of Saint Alphonsus Nampa's admitting physician data is a flawed approach considering any changes that its made in the recent past?

A. Yes. In the beginning of the calendar year 2008, so in the neighborhood of January 2008, Saint Alphonsus Nampa implemented a hospitalist program, which, in essence, means that employed physicians at the Saint Alphonsus Nampa facility who are working in the facility will take patients and do the admissions. So if a patient were to be referred by a physician and walk through the front door of the

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hospital or enter the hospital through the emergency room, the hospitalist employed by Saint Alphonsus Nampa would be responsible for the actual admission.

So in the admissions data, the admitting physician would identify the hospitalist who made that admission of the patient, regardless of who the primary care physician was that sent the patient there.

Q. And did you discuss the Nampa admissions process with any physicians that served as hospitalists at Saint Alphonsus Nampa?

A. I did. I spoke with Dr. Crownson, and similar to what he had prepared in his declaration, he told me that when he was a Saint Alphonsus hospitalist he would admit patients, as I just described, but importantly, since he is no longer a hospitalist there the patients that he refers to Saint Alphonsus Nampa would not have him recorded as the admitting physician any longer. To the degree the patient discloses who the primary care physician is, his name would then show up as a primary care physician, but not the admitting physician.

Q. Did you see any deposition testimony in this case from other physicians regarding referrals to Saint Alphonsus in light of its hospitalist program?

A. I did. Dr. Mark Johnson, who was formerly with the Mountain View Medical Group, testified similarly that

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any Saint Alphonsus data that would list him as the admitting physician would not reflect the many times that he referred patients to the facility and would have been admitted under someone else's name.

Q. How frequently is a primary care physician identified in the Saint Alphonsus Nampa admissions data?

A. In the most recent data that was produced for Saint Alphonsus Nampa, there is a physician's name in the primary care field approximately 56 percent of the time.

Q. And what is your understanding as to how that primary care physician data is recorded or collected?

A. I understand when a patient is being admitted to the hospital, they are asked by the individual doing the admission process who their primary care physician is that -- who they would indicate as their primary care physician. So to the degree that a PCP has been articulated, it would be recorded at that point in time in the medical record of the patient.

Q. And have you seen any testimony from any Saint Alphonsus Nampa witnesses regarding the use of admissions data versus PCP data?

A. I have. Mr. Checketts testified in his deposition, and then again here at the trial, that in order for him to come up with the 57 percent overall loss in referrals to hospitalists, it was necessary for him to look

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at data that was before the hospitalist program had been implemented. So in his analysis, he went back to the first half of fiscal year 2008, which is the first six months of -- or rather, the last six months of 2007, to analyze admissions data so that he could avoid the issue of the hospitalist program that then started in 2008.

Q. Having reviewed the data and the deposition testimony of Saint Alphonsus witnesses, what data do you find to be the most reliable in terms of analyzing a potential decline in referrals made by physicians to Saint Alphonsus Nampa?

A. I think the most reliable data would be the recorded primary care physician identifier.

Q. And have you seen any evidence of Saint Alphonsus Nampa, itself, relying on the PCP information captured in its admissions data?

A. Yes, I have.

Q. What is that?

A. Mr. Checketts testified that not only do they collect the information, that based on the primary care physician that's recorded in the data, Saint Alphonsus Nampa actually provides medical records back to that physician for that patient.

Q. So what does that type of reliance suggest to you regarding the way that Saint Alphonsus Nampa views the PCP

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data?

A. Well, not only is it reliable, it's relied upon, obviously, in a very important way since medical records are being sent back to that primary care physician.

Q. Moving on to the lost referral assumptions themselves that are contained in the impact analysis, focus first on the inpatient assumptions that you discussed earlier. I think you previously testified that the impact analysis assumes 100 percent of the admissions of Saltzer family practitioners and pediatricians will be lost; is that right?

A. Correct.

Q. What was Mr. Checketts basis for these assumptions?

A. He didn't conduct any analysis related to those assumptions. Rather, both he and Mr. Keeler testified, or indicated via declaration, that in their experience with regard to the Mercy Physicians Group, so MPG, that they had seen a loss in admissions -- or "referrals" they called them -- of anywhere between 80 to 100 percent. There was no analysis underlying those assertions.

Q. And even that testimony didn't get to 100 percent; is that correct?

A. It got close, in that there was a suggestion that virtually all referrals had ceased, but, no, I didn't see

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anything that specifically said 100 percent.
Q. Have you seen any analysis in this case that would, at least purportedly, support that 100 percent loss assumption?
A. I've seen an analysis that was performed by Professor Haas-Wilson on admissions and/or what she might call "referral patterns."
Q. Can you describe Professor Haas-Wilson's analysis of those referrals patterns?
A. Sure. What Professor Haas-Wilson looked at was in the one year before a transaction whereby one of these practices was acquired by St. Luke's, and in the one year after that acquisition had happened, what percentage of referrals, as she phrased it, were lost. But really what she did, importantly to know here, is looked at the admitting physician patterns. So, again, because of the hospitalist issue in particular, looking at admitting patterns is not relevant, in my opinion.
What Professor Haas-Wilson concluded was that with regard to three of these transactions, there had actually been a 100 percent change in admissions to the Saint Alphonsus hospitals.
Further, she looked at two other practices and found approximately a 90 percent decline in admissions between the two time periods. For Mountain View Medical, a

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primary care practice, she found a 48 percent decline in admissions. And then for three more recent transactions, including the MPG Nampa primary care physician acquisition, a range between 70 up to nearly 90 percent loss in admissions.
Q. It appears that several of the practices analyzed by Professor Haas-Wilson are specialty practices. Do you believe her results related to specialty practices, even if they were accurate, are instructive to the impact analysis?
A. No, I don't. The impact analysis is looking at lost referrals from Saltzer, which is principally a primary care practice, and, as I understand it, there are nuances associated with specialists, such as having to take call and things of that nature that wouldn't be relevant to the PCP analysis.
Q. In addition to the issues that you discussed a few minutes ago regarding the admitting physician field, have you seen evidence indicating that there may be other reasons for decreased admissions for certain physicians that have nothing to do with an acquisition of a physician practice by St. Luke's?
A. I have. First, there are preaffiliation decreases utilizing Professor Haas-Wilson's analysis that would have nothing to do with the date and time of an acquisition. So you'll see -- I can show a table here of preaffiliation

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decreases in admissions, and, again, it would have nothing to do with the transaction timing.
Secondly, there is evidence regarding a shift in referrals from Saint Alphonsus physicians away from physicians who then affiliated with St. Luke's.
And then, also, there is information and evidence that I've seen that would just generally show a decline in volumes related to Saint Alphonsus Nampa's facility, such as them losing patients to St. Luke's due to the proximity of some patients to Interstate 84 and their ease in getting to St. Luke's Meridian's facility, just general increased competition from St. Luke's. And there's testimony regarding, at least historically, the outdated and non-upkept hospital, Saint Alphonsus Nampa's facility.
Q. The first bullet point on here is "Pre-Affiliation Decreases." Can you elaborate on that point?
A. Sure. So as I indicated, Professor Haas-Wilson had a chart in her report, which is the top line item here, and this, again, focuses on those seven primary care physicians that made up the MPG group that was acquired by St. Luke's in the 2012 time frame. You can see to the far right here I've drawn a line essentially at when the acquisition of that practice was. And on Professor Haas-Wilson's basis you see a decline in admissions for the two time periods she analyzed of 87 percent.

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But if you go back and look at the declines, historically -- or increases for that matter -- but the declines in fiscal years '08, '9, and '10 are fairly sizable, as well; and, of course, those time periods had nothing to do with the acquisition by St. Luke's.
Q. I think the second point on your earlier slide was a shift in referral patterns by Saint Alphonsus physicians away from St. Luke's-affiliated physicians. Can you give a little more detail as to what you meant by that?
A. Sure. There is testimony that I have reviewed from Dr. Huerd, who was formerly with Cardiovascular Associates; if I can summarize by saying the number of heart procedures that he had been doing at Saint Alphonsus had decreased once he left Saint Alphonsus in lieu of St. Luke's. And essentially, looking at any admissions data, then, associated with Dr. Huerd would indicate a decrease in volumes that he had at Saint Alphonsus. But, in fact, it didn't have anything to do with him changing his referral patterns, rather with the Saint Alphonsus internal physicians no longer referring to him.
Q. I think you also stated that if -- a third reason or a general concept was a loss in historical volume at Saint Alphonsus Nampa related to a number of different reasons. Can you explain those in a bit more detail.
A. Sure. There were a few documents, at least, that

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I've seen. This first from March 2010 is a Saint Alphonsus document where they were discussing the gradual withdrawal of inpatient services from their facility to St. Luke's Meridian. So, you know, two, three years before the transaction between Saltzer and St. Luke's, a discussion of services already being directed away from Saint Alphonsus.

Also, in July 2010, there was a strategic plan that was produced in this matter, again, indicating that St. Luke's had garnered both market growth and share increases, and that competition at that point in time was fierce.

That same document, in its final form, made a recommendation in the March 2011 time frame that Saint Alphonsus needed to reverse the market share trend and strengthen Nampa's market share from the 43 percent it was at up to 48 percent.

And then, also, in March 2011, in a document that was a proposal for the Nampa Health Plaza, similar comments were made that the general decline in market presence and reputation over the prior few years had decreased the market share experienced by Saint Alphonsus Nampa to 42 percent and that Saltzer physicians had changed practice patterns in favor of St. Luke's at that point in time, so that there was also a general preference of residents, including those close to Interstate 84, as I mentioned, to utilize

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St. Luke's Meridian.

So there were these reasons in Saint Alphonsus documents dating back further in time that were explaining some of their volume decreases.

Q. Have you seen any testimony in this case that supports any of those facility concerns you mentioned?

A. I have. Mr. Keeler, the president and CEO of Saint Alphonsus Nampa, testified that -- well, when asked about the reason for Saint Alphonsus Nampa's declining market share back at that point in time, he had indicated that the facility itself had not been kept up well and that there were perceptions in the community that there were quality issues with the hospital. So that -- that was at least what he offered for a partial explanation for a decline in volumes and market share, historically.

Q. So how do these other possible explanations for a decline in admissions affect the impact analysis?

A. I think that it's representative of instances, at least historically, when Saint Alphonsus Nampa's volumes have been impacted, but that they -- that shift in volume wouldn't have anything to do with any particular transaction, but rather just general competition in the marketplace and other reasons.

Q. And putting those other potential explanations aside, did you recalculate Professor Haas-Wilson's

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percentage change in referral patterns using the PCP field instead of the admitting physician field?

A. Yes, I did.

Q. What did you find?

A. I looked at the three primary care physician groups that she analyzed, given that that's what we're facing here with Saltzer. And as it related to the MPG physicians, which included these seven doctors, over the time period that Professor Haas-Wilson performed her analysis, doing the exact same analysis, but instead of using the admitting physician as an indicator of a referral, and, therefore, a loss, I looked at the primary care physician field.

So instead of the 87 percent that she calculated based on the inaccurate, I believe, admitting physician data, that decline for MPG physicians over the same time period was only 23 percent.

Q. And how do you know that referrals from the MPG physicians to Saint Alphonsus Nampa didn't stop following the acquisition of the group by St. Luke's? In other words, how do you know that the 203 referrals on here in fiscal year 2012 weren't all prior to the acquisition?

A. I looked at the data on a quarterly basis for that very reason. And the transaction with MPG was actually in the time frame between July and September of 2011. So the

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blue line here is the number of patients with an MPG physician listed as the primary care physician or the referring physician, essentially, to Saint Alphonsus Nampa. And you can see that following the transaction, there was actually a modest increase in referrals on that basis.

Q. Did you prepare any similar analyses of the other primary care groups addressed by Professor Haas-Wilson?

THE COURT: Counsel, could I -- before we move on, just so I'm clear, you're referring now to -- what you're referring to is the referring physician is the physician noted in the Saint Al's admission documents as the primary care physician for this patient; correct?

THE WITNESS: That's right.

THE COURT: Okay.

THE WITNESS: For these physicians. These are the number of patients who would have an MPG physician listed as their primary care physician.

THE COURT: In the Saint Al's documents?

THE WITNESS: That's right.

THE COURT: In terms of the admitting physician, that's -- that may be the same physician or may be, I guess, if it -- if it was the same physician, then that would have been the 80-some-odd percent reduction that Dr. Haas-Wilson referred to, because that's what she focused on; correct?

THE WITNESS: What she focused on was -- yes, in

the instances when one of the seven MPG physicians would have shown up as an admitting physician.

THE COURT: Is it fair to say that -- I mean, I suppose another approach to this might have been to actually do some sampling and try to determine exactly what did happen and whether there was, in fact, a referral or not, rather than kind of relying upon these surrogates to determine who the referring physician is.

But do you agree that you've used one method of surrogacy, if you will, and Dr. Haas-Wilson used a different, and you feel yours is more accurate, more in keeping -- would track closer with what, in reality, was going on in terms of actual referrals to the hospital?

THE WITNESS: Yes, I believe that's the case. And that's not just my belief, by my own doing. Several of the Saint Alphonsus employees have testified about the PCP information being more representative of a referral.

THE COURT: Okay. Are we going to hear about that in a minute or is that something -- well --

MR. SCHAFER: I think we'll elaborate a little on that, Your Honor, hopefully -- hopefully, shed some more light on it. But, obviously, at any point if you have questions, please.

THE COURT: All right. Let's go ahead and proceed.

Counsel, I'm going to need to take another five-minute break. My apologies. We can do it now or in the next five or ten minutes. Whenever it's convenient for you, Mr. Schafer.

MR. SCHAFER: I think maybe if you can wait five minutes, Your Honor, I think I'd be at a --

THE COURT: Sure. I can wait five minutes.

MR. SCHAFER: Great, thank you.

BY MR. SCHAFER:

Q. So, Ms. Ahern, did you prepare similar analyses, as you just discussed with respect to the MPG group, with respect to the other primary care physician groups that Professor Haas-Wilson analyzed?

A. Yes, I did. As I indicated previously, Professor Haas-Wilson looked at three different primary care practices that had been acquired by St. Luke's. And as it related to Mountain View Medical Group, her analysis, using this admitting physician data, which, again, would have issues associated with it based on the hospitalist program at Saint Alphonsus, derived a 48 percent decline in admissions. Using the primary care physician field in conducting the exact same analysis renders a 20 percent decline in referrals.

For Idaho Family Medicine, her 91 percent asserted decline in admissions would be 9 percent, if you focused on

the primary care physician data.

Q. Ms. Ahern, getting to, I guess, the question that the court just asked of you, you're aware the plaintiffs' experts have made the argument that just because a given patient has a primary care physician indicated in the PCP field doesn't mean that that PCP actually referred that patient for that admission at the hospital; correct?

A. That's right.

Q. And how do you respond to that argument?

A. Well, this analysis, the impact analysis is looking at whether the Saltzer physicians will steer patients away from Saint Alphonsus Nampa. So in utilizing the primary care physician field, whether that PCP actually made the referral or the patient themselves were self-referred, Saint Alphonsus Nampa hasn't lost the admission. So if the PCP was attempting to steer patients away, they weren't successful in doing so.

Q. So with respect to the calculations and the percentages that you've calculated, does it matter to you whether that physician actually made the referral or just was unsuccessful and -- you know, with respect to plaintiffs' argument -- was just unsuccessful in steering that patient away from Saint Alphonsus Nampa?

A. It doesn't make a difference because the patient still was admitted to the Saint Alphonsus Nampa facility.

THE COURT: Can I ask another --

MR. SCHAFER: Please.

THE COURT: I just want to make sure I understand precisely. Let's take -- well, the one that's highlighted, Idaho Family Medicine. So in the year before, there were 43 instances in which Idaho Family Medicine doctors were listed as the admitting physician on the Saint Al's admission documents, and the year after only four times were they listed; is that correct?

THE WITNESS: That's correct.

THE COURT: Now taking that same over -- now using the PCP field, we know that in the year before there were 180 patients admitted at Saint Al's in which the patient described their primary care physician as a doctor at Idaho Family Medicine; correct?

THE WITNESS: That's right.

THE COURT: And that that number reduced to 164 the year after; correct?

THE WITNESS: That's correct.

THE COURT: Now, what that intuitively tells me is that this is a -- and I could be wrong; that's why I want you to tell me if my intuition is wrong. But, intuitively, it would seem that these patients have -- again, we discussed this, I think, yesterday or the day before -- have a chronic problem in which perhaps they now have a

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specialist and that the specialist is probably not affiliated with Idaho Family Medicine, since I'm assuming that they are primarily, if not exclusively, primary care physicians, is now providing them -- that they had a flare-up of a chronic condition being treated by a specialist, the specialist, who could come from anywhere or be affiliated with anyone, went ahead and admitted them, but this same patient still considers their primary care physician to be the Idaho Family Medicine doctor; correct?

THE WITNESS: That's correct.

THE COURT: All right. Mr. Schafer, go ahead.

MR. SCHAFER: Your Honor, I think if you want to take a break now, now would be a fine time to take a break.

THE COURT: All right.

All right, we'll take -- Counsel, this will be just a very short five-minute break. My apologies, but it is what it is. We'll be in recess for five minutes.

(Recess.)

THE COURT: Counsel, my apologies, we didn't check to make sure you were back in your seats before we came in.

MR. SCHAFER: We were walking too far away from the courtroom.

THE COURT: Mr. Schafer, actually, I want to compliment you on your ability to slow down. I have commented that asking someone to slow down when they talk

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fast is kind of like asking them to remove their right arm. I mean, it's just -- it's almost physically impossible to do it, and yet you've been able to do it today. Now, having complimented you, I assume that that will not cause you to --

MR. SCHAFER: Encourage me to talk faster. I will try to keep it up. I told Tammy yesterday to give me the stop sign when I was taxing her fingers too much.

THE COURT: I jokingly have said, but perhaps only partly in jest, that I am thinking about putting a flashing sign on the lectern for counsel. And I could push it, and it says "slow down," kind of like that biofeedback loop.

MR. SCHAFER: Your words are traveling at this speed.

THE COURT: I'll just remind the witness, Ms. Ahern, you are still under oath.

Mr. Schafer, you may resume your examination of the witness.

MR. SCHAFER: Thank you, Your Honor.

BY MR. SCHAFER:

Q. Ms. Ahern, staying on this slide for a bit longer to just make sure that we address this concept, can you explain why it is that you think or that your analysis looks at the PCP physician name field as opposed to the admitting physician name field, again, with respect to these numbers

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and why you think that's a more accurate sense of what's actually happening as it relates to Mr. Checketts' impact analysis.

A. Sure. So Mr. Checketts' impact analysis is quantifying the financial loss of patients who would no longer, theoretically, be with Saint Alphonsus Nampa due to the Saltzer and St. Luke's affiliation. Again, Saltzer physicians, principally being primary care physicians, what he has assumed is approximately $20 million a year in lost revenue. That $20 million a year is based on the premise of 100 percent loss in patient referrals. To the degree you look at admitting physician data, you might have some support for that excessive analysis. But the reality is when you look at the patients' primary care physician, it's significantly less, 9 to 23 percent, as I show here.

THE COURT: Okay. Counsel, let me try to explore this just a bit. If -- what this teaches me, I think -- and I want you to correct me if you think I'm wrong -- is that clearly the primary care physicians, when they admitted a patient, were -- did make a change in their practice and, in fact, went from referring to Saint Al's to not referring to Saint Al's directly. But what it also teaches us is that not that many admissions come directly from a primary care physician; the admissions appear to come far more likely for a specialist of some kind who has started to treat

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the -- this patient and -- however, there are specialists only, and the primary care physician services are being provided by the original doctor.

So what it suggests to me is that the concern should be not so much with the referral patterns from the primary care physicians, but with the referrals from the primary care physicians to the specialists and, in turn, the specialists to the hospital.

First of all, are any of those assumptions wrong? And, secondly, is there anything in this data or in your analysis that kind of picks up not so much the loss of direct referrals, but the loss of indirect referrals because of a change in connection with various specialists that may have resulted from an acquisition?

THE WITNESS: First of all, the one thing I would add to what you suggested was that the admitting physician may not necessarily be a specialist. More often than not, in the Saint Al's data, it's a hospitalist.

THE COURT: Hospitalist. All right.

THE WITNESS: So whether the primary care physician or a specialist made that --

THE COURT: Do we know -- I mean, it seems it would have been a relatively simple thing to pull out the referrals that were done by primary care physicians, hospitalists, or a specialist. Has any data been done of

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that?
THE WITNESS: I looked at the --
THE COURT: Or any analysis?
THE WITNESS: I've looked at the percentage of time that the admissions are -- hospitalists make up the portion of admissions, and at Saint Alphonsus Nampa it's approximately, depending on the year, between 50 and 60 percent of the time. So an admitting physician would be listed as a hospitalist.
THE COURT: Okay. Again, just trying to figure out how this actually works, that's probably an ER admission?
THE WITNESS: It could be an ER admission. I think that the vast majority of the admissions are through the ER, but it could also be a non-ER admission.
THE COURT: I'm trying to figure out how that would work, but -- all right. I'm just trying to make sure I've got my head around it. I think I do to some extent.
Mr. Schafer, go ahead.
BY MR. SCHAFER:
Q. And just to clarify one other point. Staying on this slide, Ms. Ahern, if you look at the Idaho Family Medicine line, you see the "One Year After" field here showing "4," does that mean that there were only four direct referrals that year from an Idaho Family Medicine physician

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for an inpatient admission at Saint Alphonsus Nampa?
A. No. It means that there were four instances when an Idaho Family Medicine primary care physician showed up as the admitting physician.
THE COURT: Right. And I overstated. Again, we're using surrogates. All we know is that 43 times in the year before and 4 times in the year after did a primary care physician associated with Idaho Family Medicine show up as the admitting physician on Saint Al's admitting documents. And now, as I said, that's only a surrogate because we don't -- we've not done surveys. I think. Now, again, you can correct me if I'm wrong on that.
THE WITNESS: That's right.
THE COURT: Go ahead.
BY MR. SCHAFER:
Q. And staying on this, to hopefully make it even more clear, I believe at a certain point in her response or her rebuttal to your report, Professor Haas-Wilson raised a similar concept to what the court has raised with respect to whether or not these are just all the same patients, these were all prior referrals that have just continued on with their specialist and there were no new referrals from the primary care doctor. Do you remember her making a statement like that?
A. I do. Yes, I do.

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Q. And setting aside the specific PCP analysis based on the data contained in that PCP field, are you aware of any other Saint Alphonsus Nampa information demonstrating the aggressiveness of Mr. Checketts' 100 percent loss assumption?
A. I am. This document is a little bit hard to read, but this was an internal Saint Alphonsus document where they were estimating the impact of the MPG physicians departing from Saint Alphonsus. And the assumption that was made internally -- if we can get this to blow up -- was that when those physicians left Saint Alphonsus for -- based on the transaction with St. Luke's, that they would lose at Nampa, at the Nampa facility, 40 to 50 percent of the volume associated with those physicians. So, obviously, these numbers are, in some instances, less than half of what Mr. Checketts has assumed, and, again, significantly less than what Professor Haas-Wilson's analysis would suggest.

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Q. And, again, this is Saint Alphonsus Nampa's own internal projections; is that right?
A. That's right.
Q. Is there any other information you're aware of that would explain a potential future shift in referrals away from Saint Alphonsus Nampa by Saltzer physicians that has nothing to do with Saltzer's affiliation with St. Luke's?
A. Yes. Mr. Checketts testified about the opening of the Nampa Health Plaza and moving certain OB services to that plaza. Because of the distance from the Saltzer's physicians' clinic, the OB clinic, they had expressed a desire before the transaction with St. Luke's to not actually serve patients in that facility. So that would be an explanation for a decrease in volume associated with Saltzer physicians that was prior to the St. Luke's transaction.
Q. So what is your ultimate opinion with respect to Mr. Checketts' projection that the Saltzer affiliation is likely to result in a 100 percent decline in referrals from Saltzer PCPs and pediatricians?
A. I think the 100 percent assumption is quite aggressive, based not only on my analysis of primary care physician data, but also, as we can see here, based on Saint Al's own internal records as it analyzed the departure

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of the MPG physicians from its facility.

Q. And what do you think a more appropriate percentage would be to apply?

A. I think the 23 percent, which is the higher of the three primary care practices that I looked at, would be appropriate.

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Q. So what is your conclusion with respect to the percentage loss in referrals by orthopedic surgeons at Saint Alphonsus Nampa?

A. The 60 percent that Mr. Checketts has assumed is obviously, in Saint Alphonsus' own words, a worst-case scenario. And in the actual modeling that they prepared, from a financial standpoint, and then based on testimony from the doctors and representations from Saint Alphonsus, I think that the assumed 30 percent that they utilized is more

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appropriate.

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A. **That's true.**

Q. What are Mr. Checketts' bases for these assumed losses on the outpatient side?

A. **He didn't prepare and produce any analysis underlying those assumptions; rather, he simply used the same assumptions that are on the inside -- inpatient side of**

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the analysis in his outpatient analysis.

Q. Ms. Ahern, after purporting to project losses of Saltzer referrals over future years, did Mr. Checketts simply assume that referrals from Saltzer physicians would have kept up at the same volume through 2016 as they had been in prior years?

A. **No. This, again, is an excerpt from his actual analysis, and you can see that between the projected years of fiscal year '14 through '16 that the top line or the lost revenue is increasing, and, in fact, it happens to be increasing at an assumed 5 percent rate per year.**

Q. And what was the basis for that assumed 5 percent growth assumption?

A. **There was no basis for it. Mr. Checketts simply testified that he didn't think that the referrals from Saltzer would remain stagnant, so he chose to grow them at 5 percent.**

Q. Did you perform any analysis to test that 5 percent assumption?

A. **Yes, I did.**

Q. And what did you find?

A. **I found that in looking at the Saint Alphonsus admissions data that over the course of fiscal years '09 through fiscal year '12, that on average there had been a loss of 4 percent of referrals to Saint Alphonsus' facility**

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by the Saltzer physicians, so --

THE COURT: Now, what did you use to base that on?

THE WITNESS: The primary care physician data.

THE COURT: Okay.

THE WITNESS: So as opposed to an assumed 5 percent increase, the data based on primary care physician would show a decline.

BY MR. SCHAFER:

Q. So what's your opinion regarding that 5 percent growth assumption in Mr. Checketts' analysis?

A. **Well, his use of the 5 percent increases or inflates, year over year, the amount, the value, the financial value of estimated referral losses. So to the degree he is growing the base of losses, it's further increasing the number of FTEs that he would calculate needing to be cut.**

Q. Ms. Ahern, you indicated that the third portion of Mr. Checketts' impact analysis addressed an alleged revenue loss related to the Treasure Valley Surgery Center and to, I believe, a third-party entity that you referred to as "Pediatrix" with an X; is that right?

A. **Yes.**

Q. Can you please describe that portion of the impact analysis?

A. **Sure. Mr. Checketts had included an assumption**

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for SCA or the surgery center losses related to, again, referrals that he assumes will be lost to Saltzer -- or from Saltzer physicians to those individuals who would be performing surgeries at the Treasure Valley Surgery Center. As it related to Pediatrix, he assumed that there would be an additional expense that Saint Alphonsus Nampa would have to incur in order to cover newborn or well-baby checks at the Nampa Health Plaza. So, previously, when I talked about the Saltzer physicians, the OBs not wanting to perform services there based on the distance from their clinic, this was the assertion of what it would cost to replace that.

Q. And just so we're clear, since I don't think the scale is listed on this slide, these numbers are in thousands, not millions; correct?

A. **That's correct. So in fiscal year '16, the highlighted row there is a $336,000 assumed loss. The Pediatrix expense is $386,000 in that year.**

Q. When did the Treasure Valley Surgery Center open?

A. **Approximately August of 2012.**

Q. Did Mr. Checketts utilize any actual financial performance of the Treasure Valley Surgery Center in making his loss estimates?

A. **No, he didn't. His analysis is based sheerly on projections that were performed by someone other than him.**

Q. Do you have any opinion regarding the estimate

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that he has made with respect to Treasure Valley Surgery Center losses?

A. I do. Similar to -- the second point I have here, similar to the assumptions that he made in regard to the inpatient or outpatient analysis he performed, he applied the same 60 percent assumed losses of orthopedic surgeries that would be conducted at the Treasure Valley Surgery Center and, again, assumed that same 12 and a half percent

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the general surgeon. So, essentially, he made the same assumptions here as he made in other aspects of his analysis.

The top point here is that certain of the physicians, based on documents in this case, indicate that the physicians who were going to perform surgeries at the Treasure Valley Surgery Center haven't been credentialed by the time it started up, so any projections associated with that surgery center may very well, in fact, be inflated based on the fact that certain physicians couldn't perform services there yet.

And then, finally, and I think importantly, there is a Saint Alphonsus document from August of 2012, approximately the time of the surgery center opening, that I think rightfully points out the fact that outpatient surgical cases -- and this is at Saint Alphonsus

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Nampa -- were expected to decline once that Treasure Valley Surgery Center opened at full capacity. So there is this concept of there would be cannibalization of outpatient surgeries, neither of which has been adjusted for in Mr. Checketts' analysis.

Q. Now, moving to the aspect of this portion of the impact analysis related to Pediatrix with an X, Mr. Checketts included some additional expenses in his impact analysis related to that third-party entity; correct?

A. He did.

Q. Is it your understanding that the Pediatrix expenses are still part of Mr. Checketts' impact analysis or his assumptions that he is making?

A. No. As I understand it, based on his testimony here, he has agreed that those Pediatrix costs -- so this is the cost of hiring a third party to cover certain newborn checks -- would no longer, in his opinion, be part of the Saltzer-St. Luke's affiliation quantification.

Q. And you were in court when Mr. Checketts testified that moving the Pediatrix expenses from those related -- those losses related to Saltzer and St. Luke's from where he had it originally in his impact analysis to the current state section, which he said would be appropriate, didn't make any difference to his bottom line because Saint Alphonsus Nampa's operating margin would still be negatively

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impacted. Were you there for that testimony?

A. Yes, I was.

Q. What's your response to that assertion?

A. While it's true that the operating income wouldn't change based on the way that Mr. Checketts has done his analysis, that is, there would still be extra costs associated with Pediatrix, to the degree that that isn't associated with the affiliation between Saltzer and St. Luke's, that expense or hit to income, if you will, shouldn't be included in the FTE cuts that would be associated with the alleged referral losses due to Saltzer and St. Luke's affiliation.

Q. And, finally, you indicated that the fourth portion or the final portion of the impact analysis includes the net impact to operations from loss and the corresponding FTE cuts. Can you describe that aspect of the impact analysis?

A. I can. So this is the final portion of Mr. Checketts' analysis, and it's really the math of A minus B and C. This is the resulting net impact based on his analysis to operations. And so I'll stick with fiscal year '16 here. The net revenue that would result at Saint Alphonsus Nampa based on the alleged referral losses is approximately $95 million. The operating income based on the losses, then, is a resulting $2.1 million loss. Again,

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that's fiscal year '16.

Q. And does this step of the calculation that you just talked about end with the desired 2 percent margin?

A. It does not. Well, it does -- the desired 2 percent margin here is an additional calculation beyond the operating income. So as I explained earlier, what this desired income is is a calculation applying 2 percent to the net revenue in order to derive what a favorable or a desired margin would be. So, again, a fiscal year 2016, rather than the $2.1 million operating loss, the desired income or margin would result in $1.9 million of profit.

Q. And how are the resulting operating losses and the desired operating income used in the impact analysis?

A. Well, this is the sheer bottom line of the analysis. Again, as I mentioned earlier, there are two areas of full-time employee cuts. So the second line in the bottom pull-out on this page shows -- is titled, "FTE's cut - cost." And in sticking with fiscal year 2016, you can see that the analysis calculates approximately 91 employees would be cut. That is from the labor that would need to be reduced, so the employees and their corresponding salaries and benefits that would need to be released in order to make up for the asserted lost referrals.

Q. And -- sorry. Go ahead.

A. Secondly, then, the third line under the

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"Projected Cut in FTE's" is titled the "Additional FTEs cut to achieve a 2 percent margin." So the 49.7 employees out in fiscal year '16 is the additional employees that would need to be cut based on the average labor and benefit rate per FTE based on the difference between the $2.1 million projected loss in fiscal year '16 versus the desired income of $1.8 million or $1.9 million.

Q. So for fiscal year 2016, the end result looks like the total FTEs necessary to cut would be roughly 140?

A. That's what this calculation shows, yes.

Q. Okay. And so I understand, that's -- that's made up of 91 related to the cost cuts and roughly 50 related to the desired 2 percent margin; is that right?

A. That's right.

Q. What percentage of Saint Alphonsus Nampa FTEs does 140 FTEs constitute?

A. Based on their current staffing level, it's approximately 27 percent of the total head count.

Q. Ms. Ahern, have you seen any evidence that Saint Alphonsus Nampa is currently overstaffed?

A. I have. Mr. Checketts, as part of the documents that he produced with his analysis, actually provided a departmental level worksheet that shows there are approximately 56 --

MR. ETTINGER: Your Honor, I think this is beyond

3209

anything in Ms. Ahern's reports.

THE COURT: Mr. Schafer.

MR. SCHAFER: It is definitely something that she addressed in her reports, Your Honor.

THE COURT: Well, pull out the report, and let's see it. Show it to counsel.

MR. STEIN: Your Honor, I may be able to accelerate this. I'll just read from paragraph 160 of Ms. Ahern's report: "As shown above Saint Alphonsus Nampa had budgeted FTEs of 501.7 but has actual FTEs of 557.4. Saint Alphonsus Nampa's own data, therefore, shows that it may be overstaffed versus budget by 55.7 FTEs."

THE COURT: And that's what the witness is going to now testify to?

MR. SCHAFER: Yes, Your Honor.

THE COURT: All right. The objection is overruled.

BY MR. SCHAFER:

Q. It's now been read into the record, but, Ms. Ahern, can you expand on what your opinion is with respect to the number of FTEs by which Saint Alphonsus Nampa is currently overstaffed having nothing to do with the Saltzer-St. Luke's affiliation.

A. Based on their documents that have been provided by Mr. Checketts, it shows that they are over budget to the

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tune of approximately 56 FTEs, by their own doing.

Q. And so what would that mean to Saint Alphonsus Nampa's bottom line that it's overstaffed by -- for factors having nothing to do with the Saltzer-St. Luke's affiliation?

A. They would be incurring direct labor costs associated with those individuals that would result in losses to their bottom line that if the FTEs shouldn't be there, then those losses wouldn't be there either.

Q. Ms. Ahern, can you please summarize your findings related to the assumptions that underlie Mr. Checketts' impact analysis?

A. Sure. It's my belief that the assumptions that Mr. Checketts has employed, as it relates to referral losses, are the maximum that they can be at 100 percent, and that if you utilized a more practical assumption of loss referrals of 23 percent, that the losses he has projected would be significantly less.

Also, we saw information that in the first half of fiscal year '13 there hasn't been the ability of Saint Alphonsus Nampa to achieve that desired 2 percent operating margin. So utilizing that goal as a way to eliminate additional FTEs in the analysis does not seem appropriate.

Also as it relates to the hospitalists assumption of 100 percent losses, the 23 percent reduction in Saltzer

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referrals would then result in a 13 percent overall loss in hospitalists admissions rather than Mr. Checketts' assumed 57 percent.

The documents indicate that the 60 percent loss in volume assumption related to the Saltzer orthopedic surgeons that are now with Saint Alphonsus is unsupported, and the 30 percent assumption that was utilized in the internal pro forma analysis I think is more appropriate for inclusion in Mr. Checketts' work.

REDACTED

And as it relates to outpatient referrals, for the same reasons that I've given related to the inpatient referrals, the significant assumptions of 100 percent, for example, should be decreased significantly.

Q. And have you attempted to recalculate the results of the impact analysis using more appropriate numbers?

A. I did, yes.

Q. And what did you find?

A. This is a summary table that demonstrates -- if these highlight -- that demonstrates over the course of the fiscal year '14 through '16, so over three fiscal years, based on the assumptions he has made, Mr. Checketts

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generates lost operating income -- so that's profit -- of $22 million. If you change Mr. Checketts' assumptions on those referral losses to those which I believe are more appropriate, you can see the far four columns, so the four right-hand columns, of recalculated losses would result in approximately $7 and a half million. So nearly a 66 percent decline over what Mr. Checketts has asserted.

Q. A decline in the decline, so an increase; correct?

A. That's correct.

REDACTED

Q. What's the effect of adjusting Mr. Checketts' aggressive referral assumptions on the bottom line of the impact analysis?

A. Ultimately, if I adjust, again, for the assumptions that I think are more appropriate, the fiscal year '14, '15, and '16 margins, so the operating margins, are positive in all years. In fiscal year '14 at .8 percent, and 3 and 3.4 percent, respectively, in fiscal

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years '15 and '16. So by simply utilizing more reasonable assumptions, there would be no FTE cuts related to any desired margin necessary, as these margins would be in excess of the 2 percent.

Q. And, similarly, to respond to the court's question from earlier in the day, in 2015 and 2016, your numbers show that Saint Alphonsus Nampa would exceed that 2 percent desired margin; is that correct?

A. That's right.

Q. How many FTE cuts does your recalculation suggest generally might be required by the Saint Alphonsus -- by Saint Alphonsus Nampa?

A. Well, using Mr. Checketts' logic, there are a resulting approximately 30 FTEs that would be eliminated, because I have assumed that there will be referral losses, and anytime there is a referral loss, the analysis would calculate a reduction in FTEs for that.

Q. You testified earlier, though, that Saint Alphonsus Nampa may be overstaffed currently, by its own doing, to the tune of approximately 55 FTEs; is that right?

A. That's right.

Q. So what does that overstaffing mean relative to your 30 FTE calculation?

A. It may very well mean that even if there are 30 employees that are calculated, using Mr. Checketts' logic

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and analysis, that to the degree they are overstaffed by 55, there may be no necessary FTE cuts for this purpose.

MR. SCHAFER: Your Honor, we're moving now into the second aspect of Ms. Ahern's opinion, which I think we need to --

THE COURT: Could I ask one question before we move on?

MR. SCHAFER: Sure.

THE COURT: Did Mr. Checketts -- again, I'm trying to make sure that I understand kind of the base difference you have with Mr. Checketts. When Mr. Checketts assumed a 100 percent loss of referrals from the Saltzer Medical Group physicians, did he use as the numbers that would be lost -- did he use the Saint Al's admitting data in the way you have so that he was operating based upon referrals -- patients who are indicated on the Saint Al's admission documents as having been referred -- or having been admitted by a Saltzer doctor?

THE WITNESS: Yes. His underlying starting point was the admissions made by Saltzer physicians and the financial -- well, the revenue and the corresponding costs associated with those admissions in fiscal year of 2012. So he used 2012 actual data to apply his percentage assumptions for loss on a go-forward basis.

THE COURT: All right. Again, just hypothetically

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speaking, in other words, if there were 100 patients admitted in FY13 -- or FY10 -- that's not the right year -- let's say FY11, where the patients were identified as having been admitted by a Saltzer Medical Group physician, not as -- not listed as the primary care physician but as the admitting physician, if he assumed that that number would -- 100 percent of those patients would go away.

THE WITNESS: For every instance other than the orthopedics, but yes, yes.

THE COURT: Okay.

THE WITNESS: An entire loss associated with any admissions associated with the Saltzer physicians.

THE COURT: He did not assume that there would be a 100 percent loss of all patients who, when they were admitted to Saint Al's, listed a Saltzer Medical Group doctor as the primary care physician.

THE WITNESS: He did not analyze primary care physician data at all, so yes.

THE COURT: All right.

BY MR. SCHAFER:

Q. Just to emphasize one other point -- Your Honor, just to make sure it's clear -- the data that you looked at, Ms. Ahern, related only to what happened with respect to those specific groups and their PCP -- their lists in the PCP in the admitting physician fields; correct?

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A. That's exactly right.
Q. It didn't look at what happened to those aspects of Saint Alphonsus Nampa's services generally and how those were affected by changes; correct?
A. That's right.
MR. SCHAFER: Thank you, Your Honor.
THE COURT: Let's go ahead and, I guess, advise those in the hallway that they -- excuse me -- it will be only the -- now the --
MR. SCHAFER: St. Luke's and Saltzer.
THE COURT: -- St. Luke's --
MR. SCHAFER: St. Luke's and Saltzer, yes.
BY MR. SCHAFER:
Q. Ms. Ahern, now moving on to the second issue that you were asked to analyze, you understand that one of the remedies requested by plaintiffs in this case is the divestiture by St. Luke's of the Saltzer group?
A. I do.
Q. And can you summarize your opinions as to the impact on Saltzer and Saltzer physicians of Saltzer being divested from St. Luke's?
A. Yes. It's my opinion that if the Saltzer affiliation were made to be unwound, that Saltzer -- and if it returned to operations as an independent physician group, that the Saltzer physicians who would remain in the event of

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that unwind relative to the compensation that they received in fiscal year 2012 would be a decrease of more than 30 percent on average. And the reason for that is that there have been a series of physicians who departed from Saltzer which have left behind overhead, essentially costs that need to be absorbed by the then-remaining physicians.
Q. Can you describe, sort of in a general manner, what the effect is on compensation when a physician leaves the Saltzer practice?
A. Yes. When a physician leaves, the portion of the overhead costs that that physician had been absorbing is then redistributed across the remaining physicians. And to the degree that costs allocated to a particular physician increased, their compensation decreases.
Q. I notice on this slide you have referenced fiscal year 2012 in both instances. Why is fiscal year 2012 significant to your analysis?
A. That was the last fiscal year or full year of Saltzer financial information prior to the affiliation with St. Luke's.
Q. And what is Saltzer's fiscal year?
A. It ends September 30th of each year.
Q. Is there a name that you've given to this aspect of your analysis?
A. I have referred to my work here as the "Unwind

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Analysis" to represent the impact of the compensation for the remaining physicians in the event of an unwind from St. Luke's.
Q. Ms. Ahern, I want to make sure that the court understands the parameters of your analysis. Are you aware that St. Luke's and Saltzer made a representation to the court at the time of the preliminary injunction hearing that they would not complain at some later date that it would be impossible to divest Saltzer if the court ordered a divestiture?
A. I am aware of that, yes.
Q. Does your unwind analysis, in your view, run afoul of that representation?
A. No, it doesn't. I am not suggesting that it would be impossible for this to occur, but rather that the compensation decrease would occur, and that would occur regardless of whether or not there was a St. Luke's affiliation.
Q. Can you please generally describe your unwind analysis.
A. Sure. There were a net 12 physicians who departed from Saltzer during or after fiscal year 2012. What the unwind analysis does, and what I've done in that analysis, is to reallocate the costs and some revenues associated with those departed physicians across the remaining physicians in

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the event of an unwind, and then I've compared that unwound compensation, if you will, to what those same physicians made in fiscal year 2012.
Q. Can you identify the physicians who departed from Saltzer that you've taken into account in your unwind analysis?
A. Sure. In my reports that I have issued, the surgeons and other physicians who have departed are those shown on this demonstrative, and they include five orthopedic surgeons; one general surgeon, Dr. Williams; Dr. Beasley, an ENT surgeon. All seven of those individuals departed for employment at St. Luke's -- or Saint Alphonsus, rather. Two Saltzer physicians have retired since fiscal year '12. They are Drs. Papiez and Chenore. And then four other physicians have departed either during fiscal year '12 or after, including Drs. Owsley, DuBose, Vetsch, and Dr. Harris.
Q. What percentage of Saltzer's practice did the departed physicians constitute?
A. They were approximately 25 percent of the head count in terms of physicians.
Q. Has Saltzer ever lost that many physicians at any time in its past?
A. No. I understand they've never lost anywhere close to this number of physicians over this time period.

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I've looked at the historical financial records and see at least over the past four or five years, they haven't lost more than two physicians in any particular year, and I've heard testimony here in trial that, at max, over the last ten years, it's probably four physicians in any year.

Q. Does your unwind analysis take into account any physicians joining the Saltzer practice since the end of fiscal year 2012?

A. It does. In my reports I included Dr. Dahlke, who was an individual that joined Saltzer in approximately January of 2012. And then subsequent to my reports, Dr. Affleck, an ENT surgeon, has joined Saltzer. I understand that he started about a month ago.

Q. I believe you testified just now that Dr. Dahlke joined in January 2012?

A. I'm sorry. 2013.

Q. Okay, thank you. That clarifies it.

What does it mean to include these new physicians in your unwind analysis?

A. When new physicians are included and come into Saltzer, it has the opposite effect of someone leaving; that is, when they join the practice, they, then, will be distributed some of the overhead costs, and, therefore, the remaining physicians would see an increase in compensation for that reason.

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Q. And have any additional Saltzer physicians left since you submitted your report?

A. Yes. I understand that Dr. Brandy Welch has left the practice. She is a pediatrician and left for work in the state of Texas.

Q. And have you analyzed the impact of Dr. Welch departing from Saltzer?

A. Yes, I have. Again, a departure of the physician means that the costs she was absorbing then are reallocated across the remaining physicians, again, having a negative impact on their salaries.

Q. So what impact does it have on your unwind analysis that Dr. Welch has left, but Dr. Affleck has now joined the practice and is working at Saltzer?

A. Essentially, there isn't a meaningful change based on Dr. Welch leaving and Dr. Affleck joining. So the more than 30 percent is still valid in terms of a decrease in compensation, on average.

Q. And just to make sure I understand where Saltzer stands today versus where it would have stood on sort of the date of the preliminary injunction hearing. It sounds like four additional physicians have left, and two more have joined since the date of the preliminary injunction hearing?

A. I think that's correct, yes.

Q. Okay. So basically the difference between what

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you've analyzed and what your opinion would have been on the date of the preliminary injunction hearing is a net loss of two physicians?

A. That's correct.

Q. Okay. You were asked some questions -- just getting into some other specific physicians -- you were asked some questions in your deposition about your treatment of two doctors, Drs. Omer and Dr. Knowles. Do you remember those questions?

A. I do.

Q. What's unique about Drs. Omer and Knowles?

A. Both of those physicians joined Saltzer's practice during fiscal year 2012, so they had only been with the practice for two and a half and two months, respectively.

Q. How did you treat those doctors in your initial calculation?

A. In my report analysis what I did was made the assumption that those physicians would be part of the Saltzer unwind situation to the same portion of the year that they were with Saltzer in fiscal year '12. So I made the assumption from an apples-to-apples basis, that Drs. Omer and Knowles would be with Saltzer in an unwind for two and a half and two months, respectively.

Q. Do you know whether those two doctors will leave Saltzer in the event of an unwind after two and a half and

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two months?

A. I don't know with certainty, no.

REDACTED

Q. And your calculation assumes, also, that no other Saltzer physicians will depart in the year following an unwind; is that right?

A. That's right. This assumes that every physician, then, will remain for a full year following the unwind.

Q. Let's move on to the specifics of your unwind analysis. What was the first step you undertook in conducting that analysis?

A. The first step that I undertook was to analyze the fiscal year '12 financial statements of Saltzer. I needed to adjust those, if you will, for physicians who had been there for a portion of the year, as well as remove physicians who had departed.

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Q. And can you describe for the court generally how the costs incurred by Saltzer affect the compensation of the Saltzer physicians?

A. I can. Generally speaking, I have shown an illustration here, that if a particular physician earns income of $500,000, so that's generating positive profit, if you will, for the Saltzer group, before receiving compensation, there are costs that need to be deducted from that income. There are facility costs that are an allocation on a practice-wide basis, indirect overhead costs, and then there is actually a positive ancillary revenue distribution to physicians, so on a net basis the ancillary revenue would increase their compensation.

For these practice allocations in this illustration, you'll see that the $500,000 that was generated in income by this theoretical physician resulted in compensation of $275,000.

Q. I think it's probably clear, but just to make clear, these are just imaginary numbers for purposes of your illustration; is that right?

A. That's correct.

Q. Now, you mentioned facility costs, and I see them on the slide here. What are facility costs?

A. Facility costs are, as you may expect, the costs associated with rent of facilities, maintenance associated

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with buildings, utilities, and then the salaries of the individual maintenance department employees.

Q. How are the facility costs allocated to the Saltzer physicians?

A. Based on the Saltzer compensation employment agreement and the compensation parameters within it, total facility costs are allocated on an equal-share basis. So to the degree that a physician was with Saltzer for a full year -- I have an illustration here -- that the -- these five physicians, assuming they were all there for the same portion of time, in any given year, would receive an equal share of those facility costs. So five physicians would each receive $100,000 of $500,000 in facility costs.

Q. With respect to the second aspect of overhead, what are indirect overhead costs?

A. Indirect costs are associated with, largely, the salary and benefits of individuals who work in -- let me call it nonrevenue-generating departments, so administrative salaries, for example, marketing costs, salaries associated with schedulers or individuals who are coding or working in the billing department, the chart room, things of that nature.

Q. How are the indirect overhead costs allocated to the Saltzer physicians?

A. Indirect overhead is allocated based on a

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proportion of income generated by a physician. So, for example -- again, these are illustrative figures -- if Physician A had income of $400,000 and the entire practice income was $4 million, he or she would receive a 10 percent allocation of indirect overhead. Keeping with theoretical numbers here, if that indirect overhead was $2 million, Physician A would receive an allocation of cost to the tune of $200,000.

Similarly, and to show a difference here, if Physician B was a lesser earner, so instead of generating income of $400,000, generated $100,000 in income, he or she would receive a 2 and a half percent share of the indirect overhead or $50,000.

Q. So does this show that physician income is impacted differently based on whether a high-earning physician leaves versus a low-earning physician?

A. It is. The higher the earner of a physician, the more costs they are allocated in terms of indirect overhead. So if a physician who is a higher earner departs, there is going to be more cost left behind to allocate over the remaining physicians.

Q. With respect to the third aspect of the overhead, you mentioned a positive number that you refer to as "Ancillary Revenue." What is that?

A. Ancillary revenue is actually the income generated

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by ancillary departments, which includes, for example, laboratory -- the laboratory department; rehabilitation departments, which includes physical therapy; and then imaging departments, like MRI or X-ray.

Because there is a generation of positive income, meaning revenue minus costs results in a positive number, that amount is then distributed back to the physicians as a positive impact to their compensation.

Q. And how is ancillary revenue allocated among the Saltzer physicians?

A. Generally, it's done on an equal-share basis, like the facility costs are, but there are some carve-out examples. So for certain physicians, they will receive a share, for example, of laboratory that's based on a different type of formula.

Q. So can you walk the court through an illustration of a reallocation of costs in the event that a physician departs from Saltzer?

A. Sure. Sticking with my facility cost illustration, again, and assuming facility costs of $500,000 and initially five physicians being part of the Saltzer practice on an equal-share basis, they each would have received $100,000 cost allocation. If one of those physicians departs, that $100,000 share for his or her cost allocation is redistributed across the remaining physicians.

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So in this illustration, the $100,000 is spread over the remaining four so that each physician then remaining receives $125,000 share of facility costs as opposed to the original $100,000 based on five physicians.

Q. And how does a reallocation like that impact physician compensation at the end of the day?

A. Going back to how the compensation works here, if the facility costs are increased so there's a larger cost allocated to a physician, it will affect his or her bottom-line compensation in the same amount. So additional costs for facility means an equal decrease in your compensation.

Q. With that background regarding Saltzer's methodology for allocating costs, can you describe what specifically your unwind analysis contemplates?

A. Yes.

THE COURT: Counsel, we're going to need to take another break in the next five or ten minutes, but, again, go ahead.

MR. SCHAFER: I think we're probably two minutes away from a good breaking point, Your Honor.

THE COURT: Very good.

THE WITNESS: My specific analysis, then, looks at the facility costs, indirect overhead and ancillary revenue, that were related to the 13 physicians, net 12 physicians,

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who departed Saltzer. So I've redistributed, based on these formulas, that overhead costs and ancillary revenue from the departed physicians back across the remaining physicians in the event of an unwind, so as to calculate their new compensation. I then compared that result to what those same physicians who would be remaining received in fiscal year '12 to calculate the reduction in compensation.

MR. SCHAFER: Your Honor, I think, actually, this is probably the best place to take a break, if that works for Your Honor.

THE COURT: All right. That's fine.

We will be in recess, then, for 15 minutes. We'll be in recess.

(Recess.)

THE COURT: Ms. Ahern, I'll remind you you are still under oath.

Mr. Schafer, you may resume your examination.

MR. SCHAFER: Thank you, Your Honor.

BY MR. SCHAFER:

Q. Ms. Ahern, before we move on to the next step, I want to look at this slide again and just make sure I understand.

This slide, as far as the facility allocation and the way facility costs, indirect overhead, and ancillary revenue is allocated amongst Saltzer physicians, that only applies

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to Saltzer as an independent group; is that right?

A. That's right, yes.

Q. And what it would look like again in the event of an unwind?

A. That's right, as an independent group.

Q. Okay. This doesn't apply to how Saltzer physicians are compensated as members of the St. Luke's Clinic?

A. No, not at all.

Q. So we've talked about this model using illustrative numbers. I want to talk about some actual numbers, starting with facility costs.

First, what was the amount of Saltzer's facility costs in fiscal year 2012?

A. In fiscal year 2012, the Saltzer facility costs were approximately $3.1 million.

Q. And how did you perform the reallocation of those facility costs?

A. Well, as you can see here, the portion of that $3.1 million that related to the departed physicians was approximately $700,000. So that $700,000 following the compensation model was redistributed across the remaining physicians. So the same $3.1 million then is reallocated to a fewer number of physicians, thereby increasing the per physician charge for facility costs from $65,000 per

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physician to $81,000.

Q. And with respect to indirect costs, what was the amount of Saltzer indirect overhead in fiscal year 2012?

A. In 2012, the indirect overhead was a total of $8.5 million.

Q. And how did you conduct your analysis in terms of reallocating that indirect overhead?

A. Again, following the compensation agreement at Saltzer, I reallocated the $2.7 million that had been charged to the departed physicians across those physicians who would remain in the event of an unwind.

Further, however, I made a reduction to indirect overhead costs for individuals, employees that would be eliminated based on physicians having departed. So a lower head count, if you will, or base of physicians would require fewer support staff, so to speak. So the end result was a reallocated total amount of costs across the remaining physicians of $7.8 million.

Q. And what's the effect of that reallocation on a per physician basis?

A. Again, because indirect overhead is based -- is allocated based on the earning level of a particular physician, there is a range on a per physician basis for the lower earners receiving approximately $25,000 more in cost allocation, and thereby lower compensation, up to

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approximately $125,000 for the higher earners.

Q. And just so it's clear, this number, 25,000 to 125,000, is shown on here as a positive, but you're saying that's a positive to overhead that would then be subtracted from their compensation; is that right?

A. That's right. This would serve to reduce compensation, yes.

Q. Let's move on now to ancillary revenue. What was the amount of ancillary revenue allocated to Saltzer physicians in fiscal year 2012?

A. In 2012 ancillary revenue was a net $1.9 million.

Q. And what did you do in order to reallocate that ancillary revenue across the physicians who would remain at Saltzer in the event of an unwind?

A. Again, I redistributed the $500,000 that had been provided to the departed physicians across those remaining physicians. But importantly, as it related to the ancillary departments, I had to make a reduction for the losses associated with ancillary services that were generated based on the departed physicians.

So, for example, the rehabilitation department, which includes physical therapy, a lot of those patients, and therefore the revenue and income, is generated by the departed orthopedic surgeons. So I have removed from the ancillary revenue any departments that were impacted by the

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physicians who departed.

Q. And how would that decrease to ancillary revenue and the reallocation of the ancillary revenue across the Saltzer physicians affect compensation of those physicians on a per physician basis?

A. The reallocation of ancillary revenue totaling $800,000 in the unwind situation meant a lesser distribution of ancillary revenue between $14,000 and $52,000 per physician.

Q. And can you talk a bit more about which ancillary departments were impacted and how by the departed physicians?

A. Yeah. The departments that were impacted were the imaging departments, and you can see the percentage here of revenue in each of those departments that was related to the departed physicians. So a significant portion of the MRI imaging department, vascular, ultrasound, and X-ray departed along with the departed physicians. Laboratory had an impact, and rehab -- again, including physical therapy in particular -- took a hit of 44 percent.

Q. So after reallocating facility costs, indirect overhead costs, and ancillary revenue, what is the effect that you calculated on Saltzer physician compensation?

A. The effect on Saltzer compensation for the remaining physicians in the event of an unwind is more than

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30 percent when compared to the fiscal year '12 salaries for those same individuals.

Q. Did you conduct any analysis comparing the Saltzer physician compensation levels in the event of an unwind to any benchmarks?

A. I did. I looked at the management -- the MGMA benchmarks, which is the Medical Group Management Association. And in fiscal year '12, for those physicians that could be compared against benchmarks at Saltzer, 52 percent of the Saltzer physicians received compensation at or above the median benchmark. And this benchmark is for physicians in the same areas of practice, so it's done on a per physician basis, and it relates to the western region of the United States, which would include Idaho.

Following an unwind, the compensation decrease results in 15 percent of the Saltzer physicians then earning median benchmark -- at or above median benchmark compensation, so a significant decrease.

Q. And have you compared the Saltzer compensation levels to any other metric?

A. I have. I reviewed the offers that were made by both St. Luke's and Saint Alphonsus for the physicians.

Q. And were those higher or lower than what they would earn in event of an unwind?

A. Certainly higher than what they would earn in an

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unwind and also higher than what they were earning in fiscal year '12.

Q. Did you conduct any analysis comparing the profitability of the Saltzer practice to any metric?

A. I did. Again, I looked at the MGMA benchmarks. And on a per FTE physician basis -- so based on a full-time physician -- in 2012, Saltzer had profitability of approximately $308,000 per physician. That put them between approximately the 25th and 50th percentile benchmarks for profitability in the western region.

In an unwind, that income or profit would be in the neighborhood of $189,000, which would then put Saltzer's profit per physician below the 10th percent benchmark.

Q. And you've talked some about the physicians who have departed. Relative to the physicians who would remain at Saltzer in the event of an unwind, how significant were the physicians who departed?

A. Well, of the physicians who departed, six of Saltzer's top ten earners were amongst that bunch. So they were -- they were a significant portion of the income of the practice.

Q. So overall, in your opinion, what do the results of the unwind analysis indicate in terms of the physicians who would remain at Saltzer immediately following an unwind?

A. It would indicate that the -- the compensation

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that those physicians would be receiving relative to fiscal year '12 would be far less competitive and significantly decreased.

Q. Did you see any evidence indicating that the parties to this litigation or the departed physicians believed that overhead costs would increase and, therefore, compensation to the remaining physicians would decrease in the event of an unwind?

A. Yeah. I think this concept isn't a surprise to anyone involved. I have seen documents from Saint Alphonsus Nampa, internal planning documents, where they indicated the departure of the orthopedic surgeons from Saltzer would create a destabilizing force on that group, and the remaining physicians would be left, then, to cover the fixed overhead. So consistent with what -- the math of what actually happens.

And then there was also a text message exchange between Drs. Curran and Williams where they indicated Saltzer's overhead would be through the roof without us. So they were aware that this would be the case.

Q. And do you have an opinion as to whether the impact of this compensation would affect the retention by Saltzer of its current physicians?

A. Well, certainly to the degree that compensation is going to be decreased by, on average, 30 percent, the

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physicians are likely going to start logically thinking about other options available to them. That, combined with the benchmark data that is available and the offers that had been received from Saint Alphonsus and St. Luke's, would indicate that there are other opportunities for the physicians.

Q. And do you have an opinion regarding whether the decreased compensation levels would impact Saltzer's ability to recruit new physicians?

A. In terms of recruiting, if you're competing in the marketplace and offering 30 percent less than you would have otherwise, that will logically impact recruiting, also.

Q. Now, Ms. Ahern, you testified earlier that you -- in addition to your initial expert report, you submitted a rebuttal report, or a surrebuttal report, to Mr. Tinsley; is that correct?

A. That's right.

Q. And Mr. Tinsley issued only one report; is that right?

A. He issued one report and a one-page summary schedule of a revision to his calculations, or an update to his calculations, at the date of his deposition.

Q. What, generally, did Mr. Tinsley claim in his rebuttal to your unwind analysis?

A. Generally speaking, he had indicated in his

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report, as well as through his testimony, that the recruitment by Saltzer of replacement surgeons should not be difficult and, furthermore, that Saltzer could cut costs that would eliminate some of the additional overhead burden.

For example, Mr. Tinsley suggested cutting or suspending retirement contributions by 50 percent, indefinitely delaying upgrades to imaging equipment, terminating profitable mid-level providers, and canceling all employee and physician events.

Q. With respect to the overhead reallocation that we talked about earlier, did Mr. Tinsley alter your $3.1 million that you calculated and reallocated for facility costs?

A. No, he didn't.

Q. Did he criticize or alter the FTE-related adjustments that you made, reducing the indirect overhead figure from 8.5 million to 7.8 million?

A. No, he did not.

Q. Did he criticize or alter the ancillary revenue adjustments that you made, reducing ancillary revenue from $1.9 million to roughly $830,000?

A. He didn't, no.

Q. So how would you characterize Mr. Tinsley's critiques of your unwind analysis?

A. Well, essentially, he hasn't directly critiqued

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the work that I did do. What he has suggested is that recruiting of replacement surgeons should not be difficult and that there's possibly costs that could be cut in order to eliminate some of the additional overhead burden.

Q. Now, you have mentioned that Mr. Tinsley focused on replacement surgeons. Did Mr. Tinsley look at the replacement of the other physicians who have left Saltzer?

A. He didn't. What Mr. Tinsley's report and analysis is based on is simply the seven departed surgeons. So he focused 100 percent on -- in his comments about replacing the departed physicians only related to these seven. He didn't address the six physicians who, in addition to the surgeons, have departed Saltzer and who would leave behind overhead costs to be absorbed by the remaining practice.

Obviously, as I have mentioned, as it related to the departed surgeons, Saltzer has now obtained a new ENT surgeon, Dr. Affleck. And in terms of the nonsurgeon departures, Dr. Dahlke has joined.

Q. So let's discuss the seven surgeons that Mr. Tinsley believes can be recruited without much difficulty. Has Mr. Tinsley put forward any plan that demonstrates how Saltzer could recruit those replacement surgeons?

A. No. He has provided absolutely no plan or instruction of how that would occur. He's simply made the

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assertion that it shouldn't be difficult.

Q. Are you aware of any evidence that runs counter to Mr. Tinsley's assertion that replacement surgeons should not be difficult to recruit?

A. I am. I have seen testimony from individuals at Saint Alphonsus. For example, Dr. Michael Roach, when questioned about the difficulty in recruiting specialists, testified that specialists who have very unique skills are much more difficult to replace when compared against primary care physicians.

Also, Ms. Jeffcoat, the CEO of Saint Alphonsus, indicated that in discussing cardiovascular surgeons who had departed from Saint Alphonsus, that it had taken Saint Alphonsus multiple years, a very long time to be able to replace those specialists.

Q. Are you aware of any difficulty that Saltzer has had in recruiting replacement orthopedic surgeons after the surgeons that left for Saint Alphonsus?

A. Yes. I understand that -- that while there is a goal to recruit three new orthopedic surgeons that, in fact, over the course of the last year of efforts, they have not been able to recruit any, even with the financial assistance of St. Luke's during that time period.

Q. Has Mr. Tinsley put forth any calculations regarding physicians that he opines have already been

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recruited by Saltzer?

A. Yes, he did.

REDACTED

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REDACTED

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REDACTED

And, furthermore, he hasn't put forth any analysis whatsoever of replacing the remaining surgeons.

Q. And did Mr. Tinsley suggest that Saltzer may receive financial support from St. Luke's in the recruitment of replacement physicians in the event of a divestiture?

A. He did, yes.

Q. And what's your response to Mr. Tinsley in that regard?

A. With all due respect to Mr. Tinsley, I don't think either he or I know what the court will order in terms of an unwind situation. So whether or not St. Luke's could offer any kind of financial assistance or would, for that matter, offer financial assistance is unknown to either of us at this point.

Q. And even if St. Luke's were legally permitted to provide recruiting assistance, do you have any reason to suspect that that may not be in St. Luke's financial best interests?

A. Well, certainly in the event of an unwind, Saltzer physicians will be competing with those at St. Luke's. And

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there is very likely a possibility that St. Luke's wouldn't want to help a competitor of theirs in terms of recruiting physicians.

Q. With respect to looking at historical periods, are you aware of St. Luke's ever assisting Saltzer in the recruitment of replacement surgeons or recruitment of surgeons in general?

A. I am not aware of any instance of financial assistance being provided related to a surgeon.

Q. Let's move now to discussing some of the cost cuts that Mr. Tinsley addressed.

As an initial matter, what was Mr. Tinsley's source for the categories of suggested cuts?

A. He had a conversation with Nancy Powell at Saint Alphonsus.

Q. That was it?

A. Yes.

Q. Do you see any problems with him relying on Ms. Powell for these areas of proposed cost cutting?

A. Well, I see at least two issues. One, as it related to Dr. Ballantyne, the information that he was provided was -- was incorrect. Dr. Ballantyne did not depart Saint Alphonsus for Saltzer, but rather for St. Luke's.

And then secondly, as I understand it, Ms. Powell

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has been gone from Saltzer for approximately two years. So I think, at best, her information would be a bit stale at this point.

Q. And before discussing those cost cuts, can you explain where Mr. Tinsley obtained the amounts that he proposed could be cut?

A. Yes. He utilized the Saltzer fiscal year '12 financial statements, just as I did.

Q. And let's walk through a few of Mr. Tinsley's proposed cost reductions. He suggested that an unwound Saltzer would experience a cost savings of roughly $600,000 annually related to the expiration of certain equipment leases; is that right?

A. That's right.

Q. What's your response to that opinion?

A. Well, what Mr. Tinsley actually suggested specifically was that the MRI machine, the CT scanner, and ultrasound equipment that Saltzer has that came off lease in December of 2012 wouldn't need to be replaced and that that equipment could just continue to be used and, therefore, without releasing or upgrading the equipment, would be a cost savings.

But my understanding is that Saltzer would, in fact, have to either maintain that equipment in a way that would cost them funds in order to upgrade it, and/or replace

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the equipment entirely. My understanding of the equipment replacements would be a financial cost to Saltzer of approximately $900,000.

Q. Did you discuss the need for new equipment with Saltzer personnel?

A. I did. I spoke with Mr. Taylor, Drew Taylor, who is the director of imaging for Saltzer. I also spoke with Dr. Kaiser and Mr. Savage about the practicality and reality of the need for the replacement. And the fact is that, in order to remain competitive in the -- and have industry standards in terms of the equipment, there is a need to replace and/or upgrade those three pieces of machinery.

Q. In those discussions regarding the Saltzer imaging equipment, did you learn any other information about expectations regarding future imaging services at Saltzer?

A. Yeah. I understand that, based on government legislation, that there is an expectation of reimbursement rates related to procedures utilizing this imaging equipment are expected to decrease. So the upshot of that is that lower revenue would also serve to offset any potential cost savings.

Q. And Mr. Tinsley also suggested that the reductions regarding EMR license costs and CME, or continuing medical education, costs could be saved relating to the seven departed surgeons; is that right?

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A. Yes, he did.

Q. Can you discuss your views on those potential cost savings?

A. Yeah. I agree with Mr. Tinsley that those are costs that could be eliminated based on departed physicians. What I disagree with is the dollar amount that he's included. He's made an assumption of $5,000 per physician in cost savings associated with the electronic medical record system.

In fact, the documents related to the eClinicalWorks system demonstrate that there is a $1,600 savings on an annual basis when a physician departs or a user departs. So I've made calculations associated with $1,600 per departed physician related to the EMR cost and have accepted the $2,000 in continuing medical education costs per physician.

Q. And did you apply that -- those costs over the same seven surgeons that he looked at?

A. I didn't. Again, I focused on a departure of 13 physicians or a net 12 physicians. So what I did was actually reduce costs by more than what Mr. Tinsley suggested because his focus is simply on seven physicians.

Q. And are those reduced costs included in your opinion that you testified to earlier that Saltzer physician compensation in the event of an unwind would be decreased by

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at least 30 percent?
A. Yes, they are.
Q. And Mr. Tinsley also suggested cost cuts with respect to certain mid-level providers. Can you explain what his opinion was on that?
A. Yes. He made the suggestion that perhaps one nurse practitioner and a physician's assistant could be eliminated from Saltzer in the event of an unwind. His basis for, or rationale for, making that assertion was that he understood those mid-level providers not to be busy, and, therefore, eliminating them would allow Saltzer to save on their -- the salaries that they are paying those individuals.
Q. And did you do any analysis of those assumptions?
A. I did. In looking at the financial records for Saltzer, the two mid-level providers that he had indicated would be eliminated on the basis that they were not busy are actually profitable, meaning they more than cover the cost of themselves being there and contribute revenue, profitability, to the bottom line, therefore increasing physician compensation.
Q. And did you learn anything about the types of patients that those mid-level providers saw?
A. Yes. The mid-level providers are seeing overflow patients, as it's coined; that is, patients that the

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physicians can't see, don't have the time to see. So Mr. Tinsley's suggestion was that the physicians could just take those patients back on. But on the basis that their overflow patients that they are seeing, that -- that wouldn't be possible.
Q. Mr. Tinsley's largest cost reduction category relates to his suggestion that Saltzer suspend retirement contributions for physicians and employees; is that right?
A. That's correct.
Q. Can you explain what Mr. Tinsley is suggesting in that regard?
A. Yes. He made the assertion that a possible cost savings would be to cut physician retirement contributions and Saltzer employee contributions to retirement by 50 percent.
Q. And how much money did Mr. Tinsley deduct from the increased overhead burden based on that recommendation?
A. So the increased overhead burden is approximately $3.2 million. He made the assumption that by cutting retirement benefits, he could save $989,000 of that increase.
Q. And can you show how Mr. Tinsley arrived at that figure?
A. Yes. In utilizing the fiscal year 2012 Saltzer financial statements, there are physician retirement

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contributions that those physicians have made in the amount of $1.3 million.
Saltzer, in addition to that, made employee retirement contributions, so on behalf of the employees, in the amount of approximately $673,000. So the total retirement contributions were in the neighborhood of $2 million.
Q. And how does the -- and that -- that relate -- that then gets related how to the 989,000?
A. So applying the 50 percent reduction that's been suggested would get to the $989,000 in savings.
Q. And how does that break down between physicians and employees?
A. The $989,000 is made up of approximately $652,000 for physician contributions and $337,000 for Saltzer employees.
Q. Ms. Ahern, can you please describe for the court the process by which Saltzer physicians are involved in determining how their earnings are distributed?
A. Yes, I can. Saltzer physicians receive compensation at the end of the year that they then decide which portion they'll take in terms of salary or W-2 compensation versus how much of that they want to put into their retirement funds. So it's the option of the physician, but in any event, it doesn't change their overall

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compensation.
Q. And to that point, what would it mean for a Saltzer physician to fully suspend his or her retirement contributions to their overall compensation?
A. It would just simply mean that they were taking that amount of retirement contribution in the form of salary.
Q. And would that result in any cost savings for Saltzer?
A. No, it wouldn't. There is no effect on Saltzer, the business. This is the compensation of the physicians.
Q. And can you illustrate sort of what the effect of that would be?
A. Yes. So in this illustration, in making the assumption that the physicians who would remain at Saltzer in the event of an unwind made nearly $8 million in salary in fiscal year '12 and $1.3 million in retirement benefits, what that results in is total compensation to those physicians of $9.3 million.
Mr. Tinsley has assumed movement of 50 percent of those retirement funds and, of course, has assumed a savings associated with that of $652,000. But the reality is, despite the fact that the salary component and the benefits component of compensation would change, total compensation remains consistent at $9.3 million.

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Q. So moving money from retirement to salary has no effect at the end of the day for physicians on their overall compensation?

A. That's right.

Q. And what's your understanding of the importance of retirement plans to the physician participants?

A. In my discussions with Mr. Savage, who is principally responsible for the recruitment of physicians, I understand that the retirement aspect of compensation is very important. And, in fact, he indicated to me that it's oftentimes the topic that the physician addresses with him before he can get to it with them.

Q. And do you have an understanding as to how retirement contributions for staff are determined?

A. I do. Generally speaking, there is an actuarial-based formula that, depending upon how much retirement contribution is made by what's called highly compensated employees or, for the most part, physicians, there is a mathematical formula that then sets up limits on what can be contributed by -- on behalf of Saltzer employees.

Q. Would cutting employee retirement benefits result in some cost savings to Saltzer?

A. It could in the short-term. By cutting employee benefits to that tune, I think you would end up with

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potential retention issues associated with your staff. They'd become accustomed, of course, to retirement benefits being part of their compensation.

Q. You mentioned earlier your opinion that the decreased compensation that Saltzer physicians would earn in the event of an unwind might affect the retention of those physicians.

Are you aware of anything that would prevent Saltzer physicians from leaving Saltzer in the event of an unwind?

REDACTED

Q. And Mr. Tinsley and plaintiffs have criticized your conclusion that Saltzer would be less competitive following a divestiture from St. Luke's than it was at the end of fiscal year 2012, and I'm calling it unfounded.

How do you respond to that criticism?

A. Well, the reduction in compensation in the amount of, on average, 30 percent or more than 30 percent would certainly be impactful on the recruitment or, frankly, the retention of the remaining physicians.

And as I indicated, the Saltzer physicians, at this point in particular, are aware of the benchmark data.

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They're aware of the offers that have been made to them by St. Luke's and Saint Alphonsus. So it would be a logical assumption that some of those physicians would depart Saltzer.

Q. And what is your opinion regarding Mr. Tinsley's suggested cost reductions in terms of Saltzer's competitiveness?

A. Well, Mr. Tinsley's suggestion in his report was that based on the way he had treated physicians and the cost cuts that he had suggested, that the remaining Saltzer physicians in the event of an unwind would actually be made better off than they were in fiscal year '12.

He's revised those calculations and at his deposition proposed three different scenarios, one of which is that Saltzer physician compensation would decrease by nearly 15 percent.

Q. And do you find Mr. Tinsley's calculation of that nearly 15 percent net loss compensation to be accurate?

A. No, I don't.

Q. And if you -- putting the other cost cuts aside, if you simply reallocated or adjusted the retirement component of that opinion that we discussed earlier, what would that do to the bottom line with respect to Mr. Tinsley's opinion?

A. Right. So Mr. Tinsley's opinion was that there

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would be a net loss compensation, as I said, of nearly 15 percent. If I correct his calculations for the portion of the retirement suspension that's affiliated with the physician component, that 14 percent loss in compensation becomes nearly 22 percent.

Q. So do you believe that Mr. Tinsley's adjusted 22 percent net loss compensation estimate is the appropriate measure for Saltzer physicians' compensation in the event of an unwind?

A. I don't. There are cost reductions that he's still assuming that I think are inappropriate. But, ultimately, if you appropriately account for the departed former Saltzer physicians and the addition of new physicians and then account for the cost reductions that Saltzer can make, could actually make in the event of an unwind, the resulting decrease in compensation for those physicians compared against fiscal year '12 would be a reduction of more than 30 percent.

MR. SCHAFER: Thank you, Ms. Ahern. No further questions.

THE COURT: Cross, Mr. Ettinger.

MR. ETTINGER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. ETTINGER:

Q. Good morning, Ms. Ahern.

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A. Good morning.
Q. I want to start with something that you said this morning, and I think I got the exact words down. And we can find it in the transcript if need be, but I took them down as I was reading it scrolling across the screen.
And what you said was, quote: To the degree Dr. Ballantyne is not at Saint Alphonsus, there are no losses from the Saltzer physicians that would be recorded in the financial record of Saint Alphonsus Nampa, close quote.
Is that -- did you mean to say that?
A. I assume that you're reading what I said. Yes.
Q. Okay. So what you're saying is that because Dr. Ballantyne is now at St. Luke's, he won't be admitting patients at Saint Alphonsus Nampa; correct?
A. No, that's not what I'm saying.
Q. Well, Mr. Checketts' projections are of hospital revenues; correct?
A. They are.
Q. And you're saying Dr. Ballantyne is not going to have hospital revenues at Saint Alphonsus Nampa; correct?
A. No, that's not what I'm saying.
Q. Well, if he still has hospital revenues at Saint Alphonsus Nampa, then why is it that he is no longer susceptible to losing those hospital revenues if he loses Saltzer referrals?

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A. The basis on which the calculation was made is no longer valid.
Q. What basis is no longer valid? What specific basis is no longer valid?
A. That the referrals that Dr. Ballantyne has been receiving by the Saltzer physicians would, therefore, be reduced because of the Saltzer affiliation. The fact of the matter is that Dr. Ballantyne won't be at Saint Alphonsus, so any of his reductions don't have to do with the Saltzer and St. Luke's affiliation.
Q. So you're saying that -- do you believe Mr. Checketts' calculations only concern Saint Alphonsus employed physicians?
A. No, I don't think.
Q. So, presumably, Mr. Checketts' calculations included whatever doctors are practicing at Saint Alphonsus Nampa; isn't that right?
A. I -- there are several physicians that I'm sure Mr. Checketts is including.
Q. Yeah. Any physician who is practicing at Saint Alphonsus Nampa generating revenues there are included in his projections; correct?
A. Can you say the question again, please.
Q. Any physician practicing at Saint Alphonsus Nampa contributing revenues who might be getting referrals from

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Saltzer doctors are included in his projections; correct?
A. Well, no. He's included very specific physicians, so not any doctor. I don't think I agree with that.
Q. So you think -- let me just be sure I get straight what your assumptions are here before we move on. You're saying that now that Dr. Ballantyne is a St. Luke's doctor, he will keep doing cases at Saint Al's Nampa, but the Saltzer physicians will have no incentive to take referrals away from him. Is that your assumption?
A. No. My assumption is that Mr. Checketts' inclusion of Dr. Ballantyne in the way he has is no longer valid.
Q. What is it about Dr. Ballantyne's changed status that makes it irrelevant to the projections? One last try.
A. Again, Mr. Checketts has included Dr. Ballantyne in his analysis as a physician practicing at Saint Alphonsus Nampa. And given that he will be employed then by St. Luke's, the presumption is that Dr. Ballantyne will no longer be performing all of his volume any longer at Saint Alphonsus.
Q. You said he is including Dr. Ballantyne as a physician practicing at Saint Alphonsus Nampa, and so you are now concluding that he won't be a physician practicing at Saint Alphonsus Nampa?
A. No. I'm simply saying his employment or his -- he

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will now be employed by St. Luke's.
Q. And how will that affect his practice at Saint Alphonsus Nampa?
A. His practice will change to the degree that any of his patterns change by no longer being at Saint Alphonsus.
Q. Thank you.
Let's look at one more on this. You cited Dr. Mark Johnson in your report and talked about him today; correct?
A. That's correct.
Q. I want to show you a little clip from Dr. Johnson's deposition.
MR. ETTINGER: Keely, it's Ahern cross clip 100.
THE COURT: I'm sorry?
MS. DUKE: It's this one right here. Yeah, that little -- the court's little remote isn't working up there, so thank you.
THE COURT: All right.
MR. ETTINGER: We're going to play this, and then I want to ask you about it.
(Video clip played as follows:)
Q. "And how do you determine which hospital to admit a patient to?
A. "Patient preference is the -- is the first criteria. That's the first question I ask, do you have a preference on where you go?

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Q. "And where there isn't a preference, what's the next step?

A. "If there's not a preference, then I'll typically have them admitted at St. Luke's."

(Video clip concluded.)

BY MR. ETTINGER:

Q. Did you remember reading that testimony in his deposition?

A. I recall that testimony.

Q. Is his testimony as to his behavior consistent with what you expect the Saltzer primary care physicians will do if the St. Luke's acquisition goes forward?

A. Which is what? Which behavior?

Q. If there is not a preference, I'll typically have them admitted at St. Luke's.

A. I have no opinion as to whether or not the Saltzer physicians would model Dr. Johnson.

Q. You have no opinion as to whether the Saltzer physicians will engage in the behavior as he described it; correct?

A. I have not made a comparison of Saltzer physicians to Dr. Johnson in particular, so I don't know.

Q. Well, it's a very simple thing. We don't -- just take this statement: If there is not a -- and I'll take out Dr. -- let's take out Dr. Johnson's name, make it real

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simple for you. If there is not a preference, the doctor will typically have the patients admitted at St. Luke's.

Now, is that consistent with what you expect the Saltzer doctors to do if this acquisition goes forward? Yes or no, please.

A. I have no expectation of what Saltzer doctors will do at St. Luke's.

Q. Thank you.

And you don't know what St. Luke's expectations were as to where the Saltzer referrals would go after St. Luke's acquired Saltzer, do you?

A. I don't know what their expectations are, no.

Q. Prior to this case, you've had no experience in performing quantitative analyses of physician referrals; correct?

A. No. I disagree with that.

MR. ETTINGER: Why don't we play clip 44, Keely, 44A and 44B.

(Video clip played as follows:)

Q. "Prior to this case, do you have any experience in doing quantitative analyses of physician referrals?

A. "Not like the referral patterns we're looking at here, no.

Q. "Did you ever actually perform a

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quantitative analysis of physician referrals prior to this case?

A. "Not of the nature of this sort."

(Video clip concluded.)

BY MR. ETTINGER:

Q. Was that your testimony, Ms. Ahern?

A. Yes, it was.

Q. And you don't recall ever providing a specific opinion to a client on physician referrals, do you?

A. That's true.

Q. And prior to this case, you had never performed any kind of calculation where you tried to attribute referrals or admissions at a hospital to either particular physicians or physician groups; correct?

A. As I testified at my deposition, not in the form of -- exactly the form of this case, no.

Q. Or even approximately in the form of this case; correct?

A. Well, as I indicated, I have worked consistently with health systems and their affiliation and employment with physicians, so referrals are always an issue.

Q. Isn't it true that you have, prior to this case, never tried to perform any kind of calculation where you tried to attribute referrals or admissions at a hospital, either to particular physicians or groups of physicians?

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Yes or no.

A. Yes, in the manner of this case.

MR. ETTINGER: Keely, why don't you play cross clip 10.

(Video clip played as follows:)

Q. "Have you ever yourself tried to do a -- prior to this case, do any kind of calculation where you tried to attribute referrals or admissions at a hospital to particular physicians?

A. "Not that I recall."

(Video clip concluded.)

BY MR. ETTINGER:

Q. Was that your testimony?

A. Yes, it was.

Q. Now, you talked today about Karl Keeler's testimony about business at Saint Alphonsus Nampa. Do you remember that?

A. I do, yes.

Q. And you remember you were trying to suggest at that time that there was an ongoing decline in business at Saint Alphonsus Nampa up to this time. Is that -- was that what you were trying to suggest?

A. Up to this time, did you say?

Q. Right, right.

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A. I don't think I said that, no.
Q. You said, Mr. Keeler said, quote, at that point in time, close quote, that there had been a decline, right?
A. I think I was paraphrasing what was on the screen, which was his testimony regarding the perception of the Nampa facility at that point in time.
Q. And that point in time was when he had just arrived before the improvements program that he and Saint Alphonsus instituted at that hospital; correct?
A. That's right. That's what I indicated.
Q. And since that time, that hospital's revenues have increased by more than 10 percent, haven't they?
A. They -- Nampa revenues have increased, yes.
Q. Now, you offered a lot of testimony about the surgeons, the Saltzer surgeons. Now, those slides related to the cases performed by the surgeons themselves as doctors; correct?
A. Which slides?
Q. The slides about Dr. Curran, about Dr. Holley, about Dr. Beasley, and so on; correct?
A. The question again?
Q. Those slides related to the cases performed by those surgeons as physicians; correct?
A. Yes.
Q. And you don't have a view, do you, about the

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relationship between any loss of cases by those surgeons and the loss of surgery cases by Saint Al's Nampa due to the Saltzer transaction; correct?
A. I don't -- I don't follow your question.
MR. ETTINGER: Why don't we play clip 15, Keely. Your Honor, I'm sorry. I haven't been giving the page and line numbers, but this one is 174, page [sic] 24 to 175, page 6. And we can supply the others.
MS. DUKE: Your Honor, just since we're at that point, the first clip when David said -- Mr. Ettinger said clip 44, it was page 182, lines 11 to 15, and page 182, lines 23 to 25. And when he indicated clip 10, it was 184, lines 1 through 5.
THE COURT: All right. Thank you.
(Video clip played as follows:)
Q. "Do you have a view as to the relationship between any loss of cases by the surgeons who left Saltzer due to the Saltzer transaction and any loss of surgery cases by Saint Al's Nampa due to the Saltzer transaction?
A. "I don't necessary -- now, I would have to think through that more, but I don't think -- I don't think so."
(Video clip concluded.)
BY MR. ETTINGER:

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Q. And was this your testimony?
A. It was.
Q. And when the Saltzer surgeons gained referrals from SAMG doctors, those may have been cases that otherwise were already going to Saint Alphonsus hospitals; correct?
A. They may have been. But there was --
Q. And Dr. Curran talked about his volume being maintained but his payor mix getting worse; isn't that right?
A. I believe he did testify to that, yes.
Q. And when the payor mix gets worse, the hospital gets less dollars; correct?
A. That's true.
Q. Let's talk about this issue that you spent a lot of time on and the judge asked a lot of questions about in terms of the PCP field and the admitting field.
Now, you repeatedly, based on what I heard, Ms. Ahern, talked about PCP or referring physician. You seem to treat those words interchangeably.
In fact, it is the case, is it not, that the PCP field at Saint Al's Nampa doesn't say anything about referrals or referring physician; correct?
A. I would disagree with that.
Q. When you look at the field in the data, does it mention referrals?

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A. The field in the data set itself, no, it doesn't.
Q. Okay. And you also said -- and I'm quoting; I took it down: Several of the Saint Al's employees have testified that the PCP field is more representative of a referral, close quote.
A. Yes.
Q. Did you misspeak when you said that?
A. I didn't misspeak. There is testimony from Saint Alphonsus employees equating the PCP field to referrals.
Q. Did any Saint Alphonsus employee say that the PCP field is more representative of referrals than any other field?
A. They talked about it being representative of referring patterns.
Q. What -- okay. Well, we will look at the transcript, and we'll judge the credibility of your testimony. So I want you to very carefully answer if you have a clear recollection.
Which Saint Alphonsus employee said the PCP field is representative of a referral?
A. That was not the testimony in that --
Q. Okay. Well that's what you said a minute ago, so let's try another -- let's try another version.
Did any Saint Alphonsus employee say that the PCP field is more representative of a referral than any other

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particular field?
A. That was not the way the testimony was given, no.
Q. Okay. Now, in fact, it is your belief, is it not, that the PCP data doesn't tell you whether any patient admission was caused in any way by the primary care physician who is shown in the field; correct?
A. That's right. The field does not indicate who caused the referral.
Q. Okay. And, in fact, if you look at the admitting field, as Dr. Haas-Wilson did, that will understate the cases in which Saltzer physicians had a role, understate the cases; isn't that right?
A. I don't know. The admitting data is -- is convoluted with the hospitalist issue, so I assume that's true, but I don't know with certainty.
Q. Now, Mr. Checketts did not use the primary care physician field; correct?
A. He did not, no.
Q. But the primary care physician field shows that 40 percent of Saint Alphonsus Nampa patients have used a Saltzer PCP; isn't this right?
A. I don't know. I'd have to look at the data to see that.
Q. Okay. Dr. Haas-Wilson looked at it, and that's what she found; isn't that right?

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A. She may have.
Q. And Mr. Checketts assumed that Saltzer admissions only accounted for 20-some percent of the admissions at Saint Alphonsus Nampa; isn't that right?
A. Well, the revenue that he quantified was approximately 20 percent of total revenue.
Q. Right. So Mr. Checketts' assumption using the admitting field was much more conservative than the conclusion that Dr. Haas-Wilson found when she looked at the PCP field; correct?
A. I don't know how their assumptions would compare. I would have to analyze that.
Q. Well, 20 percent is a lot less than 40 percent, is it not?
A. I think it's a different bases that they're talking about.
Q. Is there any reason to believe 20 percent of revenues is more than 40 percent of admissions in this case, Ms. Ahern?
A. Revenue is different from admissions. It depends on the nature of the -- the patient being admitted and what the reason is, so --
Q. I'm asking a very specific question. Do you have any reason you can provide the court as to why 20 percent of revenues would end up being a bigger number than 40 percent

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of admissions in the facts of this case?
A. Sure.
Q. Why?
A. Because, depending upon what the patient is being treated for, revenues could be higher or lower than the percentage of the actual admissions.
Q. Do you have any reason to believe that the Saltzer physicians who are admitting patients at Saint Al's Nampa are admitting lower revenue patients than the typical patient?
A. I don't -- I don't know that to be the case.
Q. And, In fact, the Saltzer physicians tend to have a better payor mix than the typical patient at Saint Al's Nampa; isn't that right?
A. I have seen that assertion. I don't know that that's true.
Q. Do you know that, for example, a lot of patients at Saint Al's Nampa are from Terry Reilly, and they are patients who are lower income, often uninsured; isn't that right?
A. There are some patients. I don't know if it's a lot.
Q. Okay. And is there any reason to believe that patient -- well, strike that.
You also had some questions about hospitalists that

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arose, and I think the court asked you some questions about them.
Isn't it true that when a patient is admitted by a hospitalist -- actually, let me ask it slightly differently.
Isn't it true that if a specialist is causing a patient to be admitted to the hospital and treating the patient in the hospital, that is not shown as a hospitalist admission?
A. I don't know that that's necessarily the case.
Q. You don't know one way or the other?
A. Well, you would have to look at instances of a patient -- in your scenario of a patient being referred by a specialist and then see who the recorded admitting physician is.
Q. I'm not asking how you would look at the data. Isn't it true, as a matter of fact, that hospitalists take care of primary care physicians' patients in the hospital? That's their role.
A. That is their role. I don't know that that's their only role.
Q. Is it -- you don't know whether hospitalists routinely forgo taking care of patients of specialists when they're admitted to the hospital? Let me ask the question a different way. I'm sorry.
Isn't it true that if a specialist wants one of his patients to go in the hospital, it's recorded as an

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admission of that specialist, not of the hospitalist?
A. It may be.
Q. Okay. Now, you've never prepared any projections of hospital revenues, have you?
A. From scratch, I have not, no.
Q. Okay. You criticized Mr. Checketts' baseline projections as too optimistic, did you not?
A. That's, in fact, the case, yes.
Q. And what he did was he subtracted the -- his calculated impact of the Saltzer acquisition from his baseline; isn't that right?
A. Yes, he did.
Q. Okay. So as a matter of arithmetic, if his baseline projections were too optimistic, that would mean that -- and the actual baseline numbers were lower, as a matter of arithmetic, the net number would be lower; isn't that right?
A. The net number? Which net number?
Q. You start out with how they are performing before Saltzer; you subtract the Saltzer impact. If they're performing worse before Saltzer, the net number after subtracting the Saltzer impact is, in fact, a lower number; correct?
A. It's a lower number resulting in more FTE cuts that would have nothing to do with Saltzer and St. Luke's

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affiliation.
Q. Well, if the FTE --
MR. ETTINGER: Why don't we play clip -- why don't we play clip -- strike that.
BY MR. ETTINGER:
Q. In fact, it would result in more FTE cuts and the incremental FTE cuts because the baseline was lower, would not be due to Saltzer. The FTE cuts due to the Saltzer impact would be the same, wouldn't they?
A. I'm not sure I follow what you're asking.
Q. If a hospital makes $100 and you assume $20 in lost revenues due to Saltzer, you end up at 80, and that may be associated with a certain number of FTE cuts; isn't that right?
A. That's the way Mr. Checketts' analysis worked, yes.
Q. Yeah.
MR. ETTINGER: Your Honor, I just realized that we have been proceeding as if this were AEO St. Luke's. And I don't think it's AEO for anybody, but the Saint Al's people have been excluded and the St. Luke's people have remained. I don't think it matters, but I am now about to get into a document that was AEO Saint Al's, so maybe we need to flip who is in the courtroom very briefly.
THE COURT: Of everyone except Saint Al's?

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MR. ETTINGER: Right.
THE COURT: All right. Ladies and gentlemen, unless you're affiliated with Saint Al's or have been designated as subject to the court's protective order, you'll need to leave the courtroom.
MR. ETTINGER: Your Honor, this will be brief, and then we're going to have to flip it back the other way, but sorry.
THE COURT: I just wouldn't run for election in Ada County in the foreseeable future.
MR. ETTINGER: Nobody suggested that to me, Your Honor, so I think we're safe.
BY MR. ETTINGER:
Q. You -- I want to take a look at slide 20 from your deck, Ms. Ahern. And your slide 20 was intended to show -- you entitle it "Saint Alphonsus-Nampa Historical Volume Losses"; correct?
A. Yes.
Q. And the top bullet says, "Even with a gradual withdrawal. . .Saltzer still represents 40 percent of the hospital's inpatient volume." Correct?
A. Yes.
Q. Do you know whether that was referring to admissions or revenues?
A. I don't with certainty, no.

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Q. Okay. You talked about Mr. Checketts' 5 percent growth assumption. Do you recall that?
A. I do.
Q. And his growth assumption was not an assumption about the growth of Saltzer but an assumption about the growth of hospital business derived from Saltzer physicians; correct?
A. Correct.
Q. Okay. And then finally, for our brief AEO portion of this sort, you mentioned that you thought that there was room for Saint Al's Nampa to trim the fat because they were 57 FTEs over budget. Do you recall that?
A. I don't think I used the phrase "trim the fat," but I recall the topic.
Q. Well, I heard that phrase. Is that -- does that reflect your opinion or not, trim the fat?
A. What I talked about was Saint Alphonsus Nampa being overstaffed based on their documents.
Q. Isn't it true that they were shown as 57 FTEs over budget because their volume was substantially over budget?
A. I don't know that that's true, no.
Q. And if that were true -- and that's what the document you cited shows -- that doesn't suggest that there is any room to reduce FTEs simply in response to losses; correct?

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A. So that their volume was -- was over budget, also?
Q. If a hospital does a budget -- you're familiar; the hospital will budget revenues, admissions, and costs; right?
A. Absolutely.
Q. And if it's underestimating its volume, it's going to end up having to staff more FTEs to match the greater volume; correct?
A. That's true.
Q. And so if its FTEs are over budget because its volume is greater, that's not a sign of too many FTEs; that's just a sign that it did better than it thought it was going to do; correct?
A. I don't think we've seen evidence that Saint Alphonsus Nampa did better than it thought it was going to do in fiscal 2013.
Q. Did you --
A. That's what I discussing --
Q. Do you recall one way or -- the document you are talking about is not fiscal '13. It's fiscal '12; isn't that right?
A. Which document?
Q. The document that talked about 57 FTEs over budget was fiscal '12, was it not?
A. It's a fiscal year 2012 document, yes.

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Q. And in fiscal year 2012, Saint Alphonsus Nampa was significantly over budget in terms of volumes, was it not?
A. I don't know that to be true.
Q. You don't know it to be false either, do you?
A. I don't. I haven't looked at the volume in that year.
MR. ETTINGER: Your Honor, I think I'm about to finish off my last chances of politics in Ada County. I think we need to flip the AEO. Sorry.
THE COURT: Yes, if you would, Mr. DeLange.
MR. ETTINGER: The person I'll probably be least popular with is my client, who I inadvertently excluded from a large part of my cross-examination. Hopefully, I've retained enough goodwill.
Should I proceed, Your Honor, or wait?
THE COURT: Yes. Let's go ahead and proceed.
For the record, I'm obviously counting on the attorneys to make sure we have the right people in the courtroom because I don't have too much familiarity with who works where, so...
Go ahead and proceed, Mr. Ettinger.
MR. ETTINGER: Thank you, Your Honor.
BY MR. ETTINGER:
Q. So, Ms. Ahern, as you might have guessed, I'm now moving on to your unwind portion of your report.

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A. I did.
Q. And since that's about physician practice, let me start with your experience in that area.
You have never personally prepared projections relating specifically to a physician practice before this case; correct?
A. Not from scratch, that's true.
Q. And you've never had primary responsibility for preparing projections with regard to a physician practice before this case; correct?
A. I have had primary responsibility associated with analyzing those type of projections.
Q. You have not had primary responsibility for preparing such projections.
A. I have not.
Q. And you have never assessed the viability of a physician practice in a professional engagement; correct?
A. Well, I have assessed -- I have done financial analysis associated with physician practices but not the viability of a practice.
Q. Okay. And you have never analyzed the ability or inability of a physician organization to downsize; isn't that right?
A. No, I wouldn't agree with that.
Q. Aside from an efficiency study in connection with

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a hospital merger, you have never looked at a physician practice stand-alone and assessed its ability to downsize; isn't that right?
A. Outside of all the work I do related to mergers involving hospitals and physicians, no.
Q. That's right.
A. That's true.
Q. And you have never analyzed the effect on physician profitability or compensation of the loss of a revenue source; correct?
A. Well, again, I have analyzed many instances of financial ramifications involving physicians, so I don't know that I can agree that that's true.
MR. ETTINGER: Well, why don't we play clip 26, please, Keely.
Your Honor, this is page 38, lines 7 through 11 of Ms. Ahern's deposition.
(Video clip played as follows:)
Q. "Have you -- and is it fair to say that, prior to this matter, you've never analyzed the effect on physician practice profitability or compensation of the loss of a revenue source?
A. "That's probably true."
(Video clip concluded.)
BY MR. ETTINGER:

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Q. And was that your testimony?
A. **Yes, it was.**
Q. And isn't it true that, prior to this matter, you have never analyzed the impact of a divestiture of a physician group on the finances of that group?
A. **That's true.**
Q. Now, we've heard, of course, your opinion on the effect of the -- these physicians leaving Saltzer on compensation, but you have no opinion whatsoever about the impact of those physicians leaving on compensation following the first year after an unwind; isn't that right?
A. **My analysis addresses the immediate impact in the first year following the unwind; that's right.**
Q. And your calculations are under the assumption that no additional physicians will be added after an unwind, other than those physicians who are -- have currently been added; correct?
A. **None would be added or removed, that's right.**
Q. But you have not reached a conclusion that Saltzer would be unable to recruit any additional physicians even in the first year following an unwind; correct?
A. **Well, I just testified that I haven't assumed anyone else will be added, but I've formulated no physician recruiting plan, no.**
Q. And you haven't offered any opinions on the

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success or failure of physician recruiting; correct?
A. **Other than what I've observed from Saltzer's inability to be able to recruit the three orthopedic surgeons it's been attempting to recruit --**
Q. But you have not --
A. **-- I don't have an independent opinion.**
Q. But you have not drawn any conclusions as an expert about Saltzer's ability or inability to recruit even in the first year; correct?
A. **That's correct.**
Q. Nor have you offered an opinion as to how long it might take Saltzer to recruit additional physicians in the event of an unwind; correct?
A. **Just from the testimony and the documents I've seen in this matter of the difficulties associated with --**
Q. You are not offering an opinion --
A. **I am not.**
Q. -- to this court as to how long it would take Saltzer to recruit additional physicians; correct?
A. **That's right.**
Q. And you would not regard yourself as an expert on physician recruitment.
A. **I am not a physician recruiter.**
Q. And you mentioned the word "competitive" at one point. You did not attempt to assess the competitiveness of

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Saltzer before its acquisition by St. Luke's, did you?
A. **I compared the fiscal year '12 Saltzer to benchmarks, but beyond that, I didn't do a financial analysis of Saltzer.**
Q. You did not attempt to assess the competitiveness of Saltzer before its acquisition by St. Luke's; correct?
A. **Again, benchmarks are comparing against peers, so to some degree, that's looking at competitiveness of compensation.**
Q. Well, okay. Maybe that's our confusion. Beyond compensation, you didn't attempt in any way to assess Saltzer's competitiveness in the marketplace, did you?
A. **That's right.**
Q. And Saltzer has not identified to you any individual physicians that they expect would leave if this deal were unwound; correct?
A. **I'm not -- no, I'm not aware of any specifically that would depart. Again, I said I think it's probably a logical connection to make, but I know of no one with certainty.**
Q. And no one from Saltzer has even provided you with an estimate as to how many physicians, if any, would leave in the event of an unwinding; correct?
A. **That's right.**
Q. And you don't have any opinion to whether, if

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there is an unwinding, whether any Saltzer physicians would leave the area, do you?
A. **Do I have an opinion?**
Q. You don't have an expert opinion on that subject.
A. **I do not.**
Q. And you don't know whether, in the event of an unwinding, all the Saltzer physicians would leave or none of them would leave, do you?
A. **I don't know with certainty if they would leave or not leave. I suspect that with 30 percent decreased compensation, it might be a factor.**
Q. You don't have an opinion, an expert opinion, as to whether one would leave, five would leave, or a larger number would leave, do you?
A. **I do not.**
Q. And you've talked about Saltzer's compensation. You have not done any comparison of Saltzer's compensation in the event of an unwind with the compensation that anybody else in the Treasure Valley is paying physicians, other than what St. Luke's currently pays Saltzer; correct?
A. **What I have looked at is benchmark data --**
Q. Could you please answer my question yes or no, if you can? I'll ask it again if it helps.
A. **Yes. I think I have looked at that information.**
MR. ETTINGER: Why don't we play clip 41, please,

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Keely.
Your Honor, it's page 149, lines 15 through 23.
THE COURT: Thank you.
(Video clip played as follows:)
Q. "Have you done any comparison of Saltzer compensation in the event of an unwind and what anybody else in the Treasure Valley is paying any physicians currently?
A. "Beyond the St. Luke's compensation that we know, no.
Q. "And the St. Luke's compensation you know is just St. Luke's compensation of Saltzer; correct?
A. "That's right."
(Video clip concluded.)
BY MR. ETTINGER:
Q. Was that your testimony?
A. There was more to it than that, but that was my testimony in the clip you showed.
Q. And you have not attempted to determine the alternatives, if any, available to Saltzer doctors if they were to leave Saltzer to go to work somewhere else in the Treasure Valley or were to consider that; correct?
A. I am aware of other employers. I haven't done an analysis of where individuals might go, no.

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Q. Okay. One thing, and maybe I missed this --
MR. ETTINGER: Can we put up slide 61 from Ms. Ahern's PowerPoint, please, Keely.
BY MR. ETTINGER:
Q. Just a quick question: Does slide 61 represent your calculation of the aggregate impact of the physicians leaving on compensation as compared to 2012?
A. This was the -- the figures that were presented in my second reply report. As I indicated, Dr. Affleck has joined Saltzer since that time. Dr. Welch has departed, and I testified about making a small adjustment for Drs. Omer and Knowles being with Saltzer for a full year in the event of an unwind.
Q. So in round numbers, just so the record is clear,

REDACTED

A. That's approximately correct.
Q. Okay. Now you mentioned six of the ten top earners were among the doctors who left. Are those the orthopedic and general surgeons who left?
A. Yes, they are.
Q. And are you able to say how much of that, of your projected $3 million decline, results from the departure of the orthopedic and general surgeons, approximately?
A. I certainly could do the analysis. I don't know

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off the top of my head, no.
Q. Is it the majority?
A. I don't know. It would be a large portion.
Q. Now, you referred at one point to what the -- you didn't know what the court might order in the event of an unwind. Do you remember that comment you made?
A. I do.
Q. Have you considered what the court could order in order to mitigate the kinds of issues that you've raised in your analysis?
A. I have not made any assumptions as to what -- what Your Honor may order.
Q. No, my question is: Have you considered what might be useful things for the court to order to try to mitigate the impacts that you found?
A. No. I have not made any assessment of what a divestiture should or shouldn't look like.
Q. You have not been asked to do that?
A. Other than my analysis related to the compensation of these physicians at issue, I have not looked at that.
Q. Okay.
MR. ETTINGER: Why don't we look at Trial Exhibit 1386. If you could put that up, Keely, please.
BY MR. ETTINGER:
Q. Do you remember this email from Dr. Kaiser to

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Saltzer Medical Group everyone?
A. I've briefly skimmed it, but yes, I recall this.
Q. We talked about it in your deposition, you recall.
A. Yes.
Q. And Dr. Kaiser says in the last sentence of that long paragraph -- and by the way, this email was sent after this lawsuit was filed; is that right, just to put it in context? The first sentence, "Recent legal actions taken by Saint Alphonsus Health System and Treasure Valley Hospital"?
A. Right.
Q. And this is late November of 2012?
A. It is.
Q. And this is after the surgeons had left Saltzer?
A. They departed in November, so I -- I don't know that I know the exact date.
Q. Everybody knew by November 20, certainly, that they were going if they were not already gone; correct?
A. I don't know what everybody knew.
MR. SCHAFER: Object to foundation.
BY MR. ETTINGER:
Q. Had they announced their departure at that point?
A. I don't know.
Q. And Dr. Kaiser says in that last sentence, quote: For each of our employees, I would like to emphasize that you will continue to have your jobs no matter what course

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these investigations and legal challenges take, close quote.
Do you see that sentence?
A. I do see that.
Q. And you don't know that that sentence is consistent with what Dr. Kaiser and Mr. Savage and Ms. Maggard were telling you about what would happen if there were an unwind; correct?
A. I don't know whether it's consistent?
Q. That's my question.
A. We didn't talk -- Dr. Kaiser and Mr. Savage and Ms. Maggard and I did not talk about employees that may or may not have their jobs in the event of an unwind.
Q. So the subject of employees having their jobs or not having their jobs has never come in up in your investigation?
A. No. Of course, it has in the context that I made reductions. But as a general statement that's being made here, I haven't -- I haven't discussed this document with them.
MR. ETTINGER: Why don't we play clip 31, Your Honor. It's page 108, lines 19 through 23 of Ms. Ahern's deposition.
(Video clip played as follows:)
Q. "Do you believe that sentence that I read is consistent with what Dr. Kaiser and

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Mr. Savage and Ms. Maggard have been telling you regarding their prospects if there were an wind?
A. "I don't -- I don't know that it's consistent."
(Video clip concluded.)
BY MR. ETTINGER:
Q. Was that your testimony?
A. That was my testimony, yeah.
Q. Now, you were --
MR. SCHAFER: Your Honor, I'll just object on grounds of completeness to the clip that was just played. It cut off right in the -- yeah. Playing the whole question and the whole answer, I think, would be appropriate there. This isn't something where I'm arguing we should play three pages before it, but playing the whole question and answer would seem appropriate here, given that --
MR. ETTINGER: Your Honor, I have to confess that until I just saw those couple of words, I didn't realize it had been cut off, and I'm not sure what's there.
THE COURT: Well, at some point, we need to have it played in its entirety to make sure that we haven't --
MR. ETTINGER: That's fine.
MR. SCHAFER: I could read it for the record if --
THE COURT: Why don't we just do that,

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Mr. Schafer, if you have that.
MR. SCHAFER: The question was:
Q. "Do you believe that sentence that I read is consistent with what Dr. Kaiser and Mr. Savage and Ms. Maggard have been telling you regarding their prospects if there were an unwind?
A. "I don't think that it's consistent. I think -- I don't know that it's consistent. I think this was for a different, a different audience, and it was probably too optimistic."
MR. ETTINGER: Okay.
THE COURT: Mr. Ettinger.
MR. ETTINGER: Should have played it all; I apologize.
BY MR. ETTINGER:
Q. Ms. Ahern, your unwind opinion is based on data, you've testified, from fiscal year 2012; is that right?
A. The financial data is from fiscal year 2012, yes.
Q. And if the surgeons who left Saltzer left, in fact, but on December 1, 2012, hypothetically, Saltzer had decided not to do the St. Luke's deal, would that change any of the calculations you made or any of the conclusions you reached?
A. No, I don't believe so.

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MR. ETTINGER: Nothing further at this time. Thank you.
THE COURT: I assume you're covering, Mr. Ettinger, for --
MR. GREENE: We are relying on Mr. Ettinger at this point, Your Honor.
THE COURT: All right. Very good. Mr. Schafer.
MR. SCHAFER: And can we switch over? I think this -- thank you.
REDIRECT EXAMINATION
BY MR. SCHAFER:
Q. Ms. Ahern, Mr. Ettinger asked you some questions regarding your analysis of Dr. Ballantyne and whether or not your understanding was that Mr. Checketts was including a number of physicians within his analysis. Do you remember those questions?
A. I do.
Q. In Mr. Checketts' analysis, in the impact analysis, does he name Dr. Ballantyne by name?
A. Yes, he does.
Q. And do you have any reason to believe that Mr. Checketts is assuming that if Dr. Ballantyne is now at St. Luke's, that his referrals from Saltzer physicians will change in any meaningful way?

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A. **No, I don't.**
Q. And that wasn't addressed, correct?
A. **Correct.**
Q. Plaintiffs' counsel also asked you some questions about Dr. Johnson and whether you've specifically measured your expectation of Saltzer's future referral patterns against, specifically, Dr. Johnson's patterns. Do you remember those questions?
A. **I do.**
Q. Now, Dr. Johnson is part of the Mountain View Group; correct?
A. **He is.**
Q. And that was one of the groups that you analyzed, the primary care groups that you analyzed as far as a change in referral patterns?
A. **He's one of the physicians within that group, yes.**
Q. And you, in fact, analyzed your expectation regarding a potential change in referral patterns based on looking at all three of the entirety of the groups, the primary care groups that were addressed by Professor Haas-Wilson; correct?
A. **That's correct. I didn't remove any physicians from those -- those practices.**
Q. Plaintiffs' counsel also asked you some questions about deposition testimony or trial testimony that you

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reviewed regarding the primary care field versus the admitting physician field. Do you recall that?
A. **I do.**
Q. I'm going to ask you, is this -- this is testimony from Blaine Petersen at lines -- 147, 8 through 16. I just want to know if this is something that you considered in your opinion.
Q. "If you wanted to identify referrals to Saint Al's from primary care physicians affiliated with St. Luke's, do I understand correctly that what you would do is go to Saint Al's data, identify the primary care physician where the doctor was a St. Luke's doctor, and then look for those counters?
A. "Yes. We would look at the counters and compare it for different periods of time."
Did you consider that testimony?
A. **Yes, I did.**
Q. And I think you also testified that you were here when Mr. Checketts testified at trial; correct?
A. **I was.**
Q. I'm going to read you a question and answer from his trial testimony, page 974, lines 14 through 21 and ask if you considered that.
Q. "When a hospitalist admits a patient who

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has been referred by a primary care doctor, it's the hospitalist that's identified as the admitting physician; right?
A. "Yes.
Q. "So one could not reliably determine whether a primary care doctor referred a patient for admission by looking at the admitting physician field, right?
A. "That is correct."
Did you consider Mr. Checketts' answer on that basis when he testified at trial?
A. **Yes, I did.**
Q. Now, plaintiffs' counsel also asked you a question about the 5 percent growth assumption.
MR. SCHAFER: And, Mr. Chase, if you could put up slide 36. That's the wrong 36. I'll ask a different question while we're trying to find that slide.
BY MR. SCHAFER:
Q. You were asked some questions by plaintiffs' counsel regarding what information you had looked at or considered regarding what other groups in the Treasure Valley paid physicians. And I believe you were -- you gave an answer that your deposition testimony gave half of the answer but not the full answer. Do you recall that?
A. **I do.**

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Q. And you did mention in your deposition testimony that you've seen offers from St. Luke's to Saltzer; correct?
A. **That's right.**
Q. And I believe you also testified this morning you've also seen offers from Saint Alphonsus to the Saltzer physicians; correct?
A. **That's right.**
Q. And as a general matter, were those offers higher both than what Saltzer was making in 2012 and considerably higher than they would make in the event of an unwind?
A. **In both instances, whether it was fiscal year '12 compensation of Saltzer or the unwind, those offers were higher.**
Q. And have you seen any testimony in this case from St. Luke's or Saint Al's representatives that those offers were consistent with a scale that both St. Luke's and Saint Al's pays similar physicians across the Treasure Valley?
A. **Yes.**
Q. And now we do have the slide on the screen, slide 36. Plaintiffs' counsel asked you a question as to whether or not -- I believe the suggestion was that what you had measured in this slide was a 4 percent decrease in the size of Saltzer itself. Is that what this measures?
A. **No, it doesn't.**
Q. What does this measure?

A. This looks at the instances, as I indicated, where a Saltzer physician is recorded in the Saint Alphonsus Nampa data as a primary care physician. So this represents the average decline in PCP data or referrals associated with Saltzer physicians over this time period.

Q. And that's before any Saltzer affiliation with St. Luke's; correct?

A. That's right.

MR. SCHAFER: No further questions, Your Honor.

MR. ETTINGER: No questions, Your Honor.

THE COURT: Ms. Ahern, I want to -- and I don't want to be beating a dead horse, but I want to make sure I understand.

Is it possible to bring up the slide that showed the numbers, the PCP versus the admitting doctor? I think it may have been from Mr. Checketts.

MR. ETTINGER: Your Honor, I think now we're getting into the Al's AEO. But maybe we can just --

THE COURT: I will turn off, and then I will try to avoid asking -- it's just going to be purely a hypothetical, so I'll turn off the screen.

MR. SCHAFER: Is this the one you were asking for, Your Honor?

THE COURT: That probably will be sufficient.

EXAMINATION

BY THE COURT:

Q. Now, and this really has more to do with trying to make sure I understand, I guess, your perception of Mr. Checketts' analysis.

A. Uh-huh.

Q. All right. Let's just take, all right, the first line reference there. There is a suggestion that one year before, there were 43 patients admitted who designated -- this would be one year before an acquisition. There were 43 patients who were -- who listed as the admitting physician someone from this practice group, correct?

A. That's right.

Q. All right. The year after, that number reduced to four.

A. Correct.

Q. Okay. During the same two years, there were 180 patients who listed a physician from that practice group as their primary care physician. The year after, that number reduced only to 164.

A. That's right.

Q. Now, is it your impression that Mr. Checketts took this trend of going from 43 down to 4 and, in fact, assumed that it effectively went from 43 to zero -- in other words, a 100 percent loss in referrals -- and then carried that number forward based upon what the Saltzer Medical Group

actual experience was where they had been listed as the admitting physician in the year before and assumed that that number would drop down to zero?

A. That's exactly correct.

Q. All right. If, indeed -- again, assuming hypothetically that there were 100 patients the year before who were admitted to Saint Al's with a Saltzer Medical Group physician listed as the admitting physician, that number dropped down to zero in the year after, why is that not a fair assumption that there will be no more patients going forward who were admitted to Saint Al's by a Saltzer Medical Group physician?

I'm not referring about referrals now. I'm talking about admissions, where they were actually the admitting physician. Why is Mr. Checketts wrong in assuming that that trend will continue and that there will be a resulting loss of revenues?

Now, again, assuming that, in fact, it's 100 down to zero. Now, I understand that may be in dispute, but assuming that that's correct, why do we need to look to primary care physicians? I use the word a "surrogate." I think a "proxy" might be -- I know in the environmental litigation world, the Forest Service uses a proxy as a way of trying to determine factors that they can't really get a good handle on. So I'm going to use this as a proxy.

Why is that not a good proxy for determining what's going to happen in the future with regard to patients who the admitting physician, which had been -- had been referred by Saltzer Medical Group physicians, but that will not occur in the future?

A. First of all, the admitting physician data on its face, I think, is not a reliable source. There is a lot of testimony regarding the hospitalist issue and --

Q. Now, what was the -- I was trying to figure out. I mentioned that it seemed to me that that would be primarily ER doc. Someone comes to the emergency room, they need to be admitted, and so a hospitalist -- it's referred to a hospitalist because they are going to be overseeing the care while in the hospital, and they become the admitting physician.

That wouldn't seem to be relevant here, but I'm assuming that there is also a group in which, perhaps, a referral, if you will, is made by a primary care physician to a hospitalist.

Is that what was happening? Or how does a hospitalist admit a patient since they, by definition, don't have a private practice; they only work in the hospital?

A. Right. So a patient -- this is my understanding based on discussions with physicians. A patient will either arrive at the emergency room, as you have indicated, and

3300

be -- if needs to be admitted to the hospital, would -- that would occur through the hospitalist.

Alternatively, if Dr. Kaiser, for example, was referring a patient to the hospital, not needing to go to the ER but said, I've got a patient that needs to go to the hospital and be admitted, he may send that patient directly to the hospitalist or call the hospitalist and say, I'm sending somebody over; look for them.

So you can be admitted through the front door of the hospital if someone has sent you there. More often than not, I think the admissions by hospitalists are through the ER.

Q. All right. Now putting that aside, again, what's wrong with Mr. Checketts assuming that going forward that the -- that if, indeed, in the year before, there were 100 admissions from the Saltzer Medical Group, the year after there were zero, that they can assume that that source of admissions will dry up and be nonexistent going forward?

Totally without regard to whether you refer to it as a referral or as a referring physician, just the phenomena that the -- that there were a universe of admissions in which the Saltzer Medical Group physicians were the admitting physician and that that universe has now either been reduced to zero or to a much smaller number, what is wrong with that analysis?

3301

A. Maybe the way that I can approach this is to say that I did analyze and look at the data, both in terms of combining instances when a physician appeared as the admitting physician and also the PCP.

So there may be instances when a physician, as you've indicated, shows up as the admitting physician from Saltzer. When I did that and compared the before and after time period, the 23 percent number that I calculated for MPG actually becomes 22 percent.

So it's -- when you take all of the data into account in instances when a Saltzer physician, or the proxies as we're calling them, show up as either a PCP or an admitting physician, it's -- it doesn't change the results. In fact, it makes them a little bit less in terms of the assumed loss.

MR. ETTINGER: Your Honor, I don't believe that's in Ms. Ahern's reports, what she just described.

THE COURT: Well, I obviously can't criticize her for using that, but I understand the concern that counsel has not had a chance, I think, to -- all right. Well, perhaps my concern is much ado about nothing, but I will -- I think it's better, perhaps, I leave it as it is --

MR. SCHAFER: Could I ask one --

THE COURT: -- with all the testimony coming in.

MR. SCHAFER: Could I ask one --

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THE COURT: I'm going to allow counsel to --

MR. ETTINGER: I think we both may want to, Your Honor.

THE COURT: Yeah. I certainly am going to permit that. That's -- I don't ask questions and then say, I'm done; I get the last word. That's not my MO here at all.

Mr. Schafer.

MR. SCHAFER: Thank you, Your Honor. Just looking -- staying with this screen --

THE COURT: Now, again, I have got the screen off, so I --

MR. SCHAFER: It should still be off, yes.

THE COURT: I tried to avoid referring to the physician group. I assume referring to numbers in the abstract is not going to violate AEO concerns.

But go ahead, Mr. Schafer.

CONTINUED REDIRECT EXAMINATION

BY MR. SCHAFER:

Q. And, Ms. Ahern, if you'll look at this, the acquisition date section with respect to these three groups --

THE COURT: And I should note this is slide 25 of the exhibit number which we have assigned to this demonstrative, and I don't recall what that exhibit number is.

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MR. SCHAFER: 5123, Your Honor.

THE COURT: All right. Thank you.

BY MR. SCHAFER:

Q. So looking at the acquisition date field here, Ms. Ahern, to address some of the court's questions regarding why it may not be an apples to apples comparison to look at the admitting physician field one year before and one year after, can you remind me when the hospitalist program was implemented at Saint Alphonsus Nampa?

A. In January of 2008.

Q. Okay. So -- and has that hospitalist program, since its implementation, had an effect on the number of admissions associated with primary care physicians at independent groups or other groups?

A. Yes, it has.

Q. And with respect to the --

THE COURT: Wait just a moment. Let me make sure I understand. So you're saying apart from any physician group that was acquired after the implementation of the hospitalist program in January of the 2008, from that point forward, the number of direct admissions by primary care physicians reduced by some measurable number?

THE WITNESS: Yes.

THE COURT: All right. Thank you. I just wanted to make sure I understood the point. Go ahead.

3304

BY MR. SCHAFER:

Q. And I'll identify one group here but not the specific numbers associated with it. With respect to the Mercy Physician Group where the acquisition date was in fiscal year 2012, can you tell the court any reasons why that group may have had more admissions at Saint Alphonsus Nampa during the pre-period when it was part of Saint Alphonsus Nampa than the post, other than, you know, issues relating to referrals?

A. Sure. The Mercy Physician Group was a group that was employed by Saint Alphonsus Nampa. So they, presumably in the pre-time period, were admitting more patients than they would in the post period when they were no longer with Saint Alphonsus.

Q. And were any of the Mercy Physician Group physicians actually themselves hospitalists at Saint Alphonsus Nampa?

A. Yes. Drs. Cothern and Crownson were, in fact, hospitalists.

MR. SCHAFER: Thank you. No further questions.

THE COURT: All right. Mr. Ettinger.

MR. ETTINGER: If we could leave that screen up. If I don't have it there, let me just check something.

RECROSS-EXAMINATION

BY MR. ETTINGER:

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Q. Two of the three groups shown there practiced in Boise, not Nampa; isn't that right, Ms. Ahern?

A. They were in Boise, that's right.

Q. So the time that the hospitalist program was instituted in Nampa doesn't tell you anything about those two groups; correct?

A. I believe they were instituted at the same time.

Q. When was the hospitalist program instituted in Boise, do you know?

A. I believe it was in 2008, as well.

Q. Okay. Now, Drs. Crownson and Cothern were hospitalists one day per week; correct?

A. I believe the testimony is that they were hospitalists one week at a time, so a seven-day time period.

Q. Per month?

A. I think it was every four to six weeks they spent a week serving as hospitalists.

Q. Okay. Now, you say the admitting physician data is not reliable. If the admitting field lists a doctor as the admitting physician, that is absolutely reliable, is it not?

A. I don't know that that's true. I don't have a reason to think it's not.

Q. Okay. Now, the hospitalist program at Saint Al's Nampa is very popular among the Saltzer primary care

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physicians; isn't that right?

A. I don't know if it's very popular.

Q. Did you investigate as to that?

A. Referrals are made by Saltzer physicians to Saint Al's, and then the patients are admitted by hospitalists. I don't know the level of popularity.

Q. And by and large, the Saltzer primary care physicians who, before the hospitalist program, practiced at Saltzer Nampa, after the hospitalist program have confined themselves to an office practice and sent their patients to that hospital through the hospitalist; correct?

A. I believe that's correct, yes.

Q. And the number Mr. Checketts calculated that he used, he used -- he looked at the percentage of cases that those doctors represented of the total who later used hospitalists for the year before the hospitalist program started; isn't that right?

A. And he assumed 100 percent of those would be lost, yes.

Q. And that was a 50- -- 57 percent of the hospitalist cases; correct?

A. That's right, more than half.

Q. Yeah. And you have no reason to believe, do you, that the Saltzer physicians who were admitting directly before the hospitalist program, reduced -- the primary care

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physicians reduced their admissions to the hospital after the hospitalist program, as opposed to simply admitting at the same rate but through the hospitalists; correct?

A. I don't know with certainty.

MR. ETTINGER: Nothing further. Thank you.

THE COURT: All right. You may step down. Thank you, Ms. Ahern.

Counsel, we're -- where are we at in terms of further testimony? We need to take another break, but I --

MR. SCHAFER: I think this would probably be a good time for it. We have two more live witnesses, Your Honor, and I think we should get through them today.

THE COURT: Okay.

MR. SCHAFER: I have every expectation we will get through them in plenty of time today.

MR. BIERIG: And, Your Honor, we have two more live witnesses. I expect that the direct testimony of each of them will be in the vicinity of 25 minutes to a half hour.

THE COURT: All right. Let's try to -- we'll truly try to hold this to a 15-minute recess, so please be in your seats. We'll probably try to be coming into the courtroom in about ten minutes to. All right.

MS. DUKE: And, Your Honor --

THE COURT: Yes?

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MS. DUKE: -- we also have Greg Sonnenberg, who will be very brief, but he is the witness that you indicated we could subpoena and bring in for a brief cross-examination. And we have him here at 1:00 today.

THE COURT: Is there a chance -- I don't want to break up a witness.

MS. DUKE: It's fine. We can have him wait till the end of court today.

THE COURT: Okay. Very good.

MS. DUKE: I just wanted you to know that.

THE COURT: All right. We'll be in recess for 15 minutes.

(Recess.)

*****COURTROOM OPEN TO THE PUBLIC*****

THE COURT: Mr. Bierig.

MR. BIERIG: Thank you, Your Honor. As our next witness, we call Dr. Thomas Patterson.

THE COURT: Dr. Patterson, would you please step before the clerk and be sworn.

THOMAS SHON PATTERSON,

having been first duly sworn to tell the whole truth, testified as follows:

THE CLERK: Please state your complete name and spell your name for the record.

THE WITNESS: Thomas Shon Patterson, T-H-O-M-A-S, S-H-O-N, P-A-T-T-E-R-S-O-N.

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THE COURT: Mr. Bierig, you may inquire.

MR. BIERIG: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. BIERIG:

Q. Good afternoon, Dr. Patterson.

A. Good afternoon.

Q. What is your profession?

A. I'm a physician.

Q. Do you have a medical specialty?

A. I'm in pediatrics.

Q. By whom are you currently employed?

A. Saltzer Medical Group.

Q. Can you briefly describe your educational background.

A. I completed my bachelor of science in chemistry at University of Arizona in 1991. And then I went to University of Arizona College of Medicine from 1991 to 1995, where I got my medical degree. And then I completed a pediatric residency at University of Arizona-affiliated hospitals from 1995 to 1998.

Q. And then what did you do in 1998?

A. In 1998 I was blessed to have an opportunity to join Saltzer Medical Group, which was then Medical Center Physicians.

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Q. So have you been with Saltzer since 1998?

A. Yes, sir.

Q. And where is your office?

A. I'm located in Nampa.

Q. Is your practice limited to pediatrics?

A. I do pediatric patients only.

Q. Roughly how many patients do you have in your practice?

A. I don't count patients entirely, but I know my panel has to be somewhere in the 2,000 to 2,500 range.

Q. Approximately how many of those patients come from Boise?

A. Again, I think my best estimate would be somewhere between 50 and 100 patients.

Q. And how many from Meridian?

A. A little bit larger number. Probably in the 200 to 300 range.

Q. And how many of your patients would you estimate come from Caldwell?

A. Caldwell is a large percentage of my patients. I would guess somewhere in the 700, 800 range.

Q. Do you serve in any administrative capacities of Saltzer?

A. I sit on the Saltzer Medical Group Executive Committee as well as the St. Luke's Saltzer Joint Operating Council. And I am the chairman of the Business Marketing Development Committee.

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Q. How long have you been on the Executive Committee?

A. It's been greater than a decade. It's been most of my career here.

Q. Are you aware of an entity called the Patient-Centered Medical Home Collaborative?

A. Yes, sir.

Q. And what is that?

A. The Patient-Centered Medical Home Collaborative was started by an executive order of Governor Otter about three years ago looking at a patient-centered medical home model that was focussed on commercial insurance rather than public insurance as most of the models across the nation had been prior to that.

Q. And what is the goal of the collaboration?

A. The ultimate goal is actually coming to fruition now where there are pilot programs across the state where practices have moved towards patient medical -- patient-centered medical home, and they are now able to provide that increased availability and that better care that a patient-centered medical home provides.

Q. What is your position on the collaborative?

A. I represent pediatric patients on the collaborative and pediatricians.

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Q. Now, Dr. Patterson, as a Saltzer physician, why were you interested in affiliating with a healthcare system back in the 2010-2011 time frame?

A. It's been a long process, but there is many benefits to the affiliation. I think going along with a patient-centered medical home, it's a goal of mine. It's been since the patient-centered medical home really came to my knowledge base that I wanted to move towards that.

Including integrated care, that required a greater infrastructure being part of a health system. I think if you look at recruitment, the doctors that are coming to us as applicants at this point are looking to see if we're with a health system. And I think that's enhanced our ability to recruit.

I think a goal that we share with St. Luke's is a value-based compensation model for the care of our patients. And that's something that with a health system we are allowed to do, but as a private practice we were really not able to do.

And then one of my passions is child advocacy. I do a lot of community outreach, and that is as a private physician. It was all on my own time. It was time I had to take out of the practice, time I was not available to my patients, and time I was not getting compensated to do all of the child advocacy things I do. At St. Luke's, it's just

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part of the culture; it's expected of me.

So I think where being out of the office created a stress for my pediatric practice, now it's expected, and it's encouraged, and I welcome that.

And then I think, lastly, you know, the most important part is patients. You know, again, patients have greater access to us. There is more availability to see the most vulnerable of those that are on Medicaid that -- or self-pay, those that their real only disability is a financial disability.

Q. If I followed you, I think there were five reasons that you gave, so let me see if I can explore them.

You used the term "patient-centered medical home." What do you mean by that?

A. So, in essence, a patient-centered medical home puts the patient at the center. They become part of the care team. They're a partner with you. They are in a situation where they have a relationship closer with their primary physician. That physician is then available or has coverage to be available to that patient 24/7, across outpatient care, inpatient care, ancillary services. It really is a great benefit to the patient.

Q. How, if at all, is the affiliation with St. Luke's helping you with establishing a patient-centered medical home for your patients?

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A. So a patient-centered medical home takes a long time. It requires a lot of transformation in the practice. It requires a lot of resources.

At this point in time, I have looked to a pilot that is going at St. Luke's with a developmental pediatric office, and they are part of the Governor's Patient-Centered Medical Home Collaborative. And they're actually instituting patient-centered medical home practice in their location, and I'm seeing the benefit my patients have from that.

Being that they are part of St. Luke's, I know that's a direction that I can head now and am closer to having that as an option for me. Where, as a private physician, I was offered a chance to start a patient-centered medical home pilot at my practice, but it required buy-in from all of my providers in pediatrics. And I -- because of costs and time and the risk, there was not a good buy-in, and so we weren't able to get a pilot program started.

Q. So are you saying that you tried to establish a patient-centered medical home project while at Saltzer, and it didn't work? Or what are you saying?

A. Yes.

Q. How long will the process take to go to a patient-centered medical home for pediatric patients?

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A. It's a long process. It's going to be two years or more at minimum.

Q. Could you have established a patient-centered medical home through a joint venture with St. Luke's?

A. Again, a patient-centered medical home requires extended resources. It requires integrated care across hospital and outpatient settings. A patient-centered medical home is difficult to establish without those extended resources.

Q. How did you see an affiliation with St. Luke's as helping you provide more integrated care or more coordinated care?

A. So being part of a health system enhances my ability to be realtime with what's going on with my patients. And if I'm patient-centered, I want to know what's going on at the specialist's office. I want to know what's going on in the hospital. I want to know everything that's going on. And integrated care is seamless, and it provides my patient the benefit of me being involved in all aspects of care rather than being fragmented as part of an outside system that works in concert with the health system but not integrated with the health system.

Q. So as a pediatrician at Saltzer, you are not yet fully participating in the Epic health -- electronic health record, are you?

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A. No. It's not been offered to us at this point in time pending the current litigation.

Q. What effect, if any, would participation in the Epic EHR have on your practice?

A. Again, it's an enhanced electronic medical record. Our current electronic medical record was purchased based on value. It was affordable for us, but it's more of a plug-and-play electronic medical record. It doesn't have the extended ability to look at outcomes. It doesn't have the patient registry options.

Epic is a much more robust system. It's one that you see, you know, three-fourths of the ACOs in the United States using Epic as a system. So I look forward to being able to explore what power that has in my effort to become a patient-centered medical home.

Q. When you say "ACO," what are you referring to?

A. Accountable care organization.

Q. The second thing you mentioned was recruiting. How, if at all, has affiliation with St. Luke's helped Saltzer to recruit physicians?

A. So having been on executive committee for a long time and seeing recruitment efforts, we'll have open recruitments for several years and very few applicants. And now we're actually getting so many applicants, we have to say, "We can't process your application right now. Please

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bear with us."

And so we have seen a great number of applications increase, and the big change has been being part of a health system.

Q. And why is being part of a health system important for recruiting physicians to Nampa?

A. I think it's a change where, a decade ago, there was a lot of emphasis on being independent. I think where healthcare is going, people are seeing the shift to being part of a healthcare system is important for the longevity of their careers.

Q. So now moving to what I think was your third item, which I believe is value-based delivery of care. How do you understand that term?

A. So value-based medical care is really looking at outcomes. It's looking at population management of disease, and it's a shift from taking care of acute issues to doing more in prevention and education. It is a best- practice that certainly benefits the patient by aligning incentives that are favorable for the patient.

Q. And could Saltzer have transitioned to value-based care as an independent clinic?

A. So value-based care, being that it's outcome-measured, Saltzer didn't have the capability to look at outcomes to measure them specifically. It would have been,

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one, too expensive, and we would have had too little resources to do that. We have too narrow of a physician base. We don't have the specialties across all areas that it would require. We don't have that integrated care with a health system that I think is so pivotal in a value-based care. We really costwise couldn't, timewise couldn't.

Q. What impact does a fee-for-service system have on a transition to value-based care in your experience?

A. So a fee-for-service schedule is really volume-driven, and it's counter to what value-based medicine really means for the patient. You know, a physician is so busy trying to see volume, that they don't have time to take care of the patient the way they really want to oftentimes.

Q. Could you have transitioned to value-based care through a joint -- a joint venture or some kind of loose affiliation with St. Luke's?

A. You know, we looked at joint ventures, and we realized very quickly that it wouldn't have the scope of the needed things that we would need to go that direction. We have had some joint ventures that haven't been really successful for us, and they have done nothing to push us forward towards our goals.

Q. How, if at all, do you see the affiliation with St. Luke's as affecting your ability to transition to value-based delivery of care?

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A. It's already happening within part of St. Luke's. And again, that gives me the hope that we can bring it to Nampa and let our Nampa patients experience the value that that has.

Q. And when you say you have already seen it happening, could you elaborate on that.

A. If you look at the Spine Institute that's part of St. Luke's, they're actually doing less surgery. That doesn't make sense under fee-for-service, to do less surgery.

So patients that typically would have been in a fee-for-service schedule, gone into, you know, surgery, they are now having nonsurgical intervention which is helping them.

Q. So I think the fourth thing you mentioned was community outreach. How, if at all, has the affiliation with St. Luke's affected your ability to do community outreach?

A. So, again, it's encouraged. It's expected. It's part of the culture, which is just kind of a cool thing for me. It allows me to do it without having that stress. And if we certainly move to a value-based compensation program in the future, it will allow me to have more freedom to do that because all of my activities won't be focused on seeing a patient in a room as an integral unit. It will be on

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helping the community be healthy, which my community outreach helps with.

Q. Can you give an example of the kind of community outreach you're doing as a result of the affiliation with St. Luke's?

A. So since the affiliation with St. Luke's, I have been able to join the Kids Congress, which is a group of pediatricians who are focused on improving the health and outcomes for the pediatric population. And it's just been an exciting part of joining St. Luke's to be included in that group of what I see as very respected pediatricians in the community.

Q. And what is the goal of the Kids Congress?

A. So the Kids Congress is really looking -- there are projects that we're focusing on. One of the ones I can think of that happened two months ago at our meeting was we were looking at introducing a vision screening by instrumentation program in pediatric offices.

And just knowing that child development and vision development specifically occurs all the way through age nine. And having an ability to have an instrument in the office to get visual acuity screening is important, and the Kids Congress has seen that.

We have had education from pediatric ophthalmologists that are local, and we're trying to

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establish the feasibility and the mechanism to do that at this point.

Q. Now, if I'm not mistaken, you're currently compensated on the basis of a guarantee and then some additional compensation based on RVUs; is that correct?

A. Yes.

Q. How does the compensation structure affect your ability to do community outreach?

A. Again, the guarantee is nice from the point of view of I can take the time to do those things. I recently had to be out of the office for an entire day to lecture at the statewide immunization summit -- that's the immunization coalition that I started -- put on. And doing it as part of St. Luke's, I had way less stress than I would have a year ago doing it as Saltzer, where it was completely, you know, my responsibility.

Q. When you say "completely my responsibility," what do you mean by that?

A. The cost of me being out of the office.

Q. Because you were on fee-for-service?

A. I bore that entirely.

Q. Going to the fifth point you made, when Saltzer was entirely independent of St. Luke's, what was its policy on its physicians treating Medicaid patients?

A. So as an employed physician, when I started 15

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years ago, it was clear that I could not limit my Medicaid practice. This was a rule that was in our bylaws, and it really allowed us to grow our practice as fast as we could.

And that was incredibly important because there were plenty of Medicaid patients not being treated by a pediatrician. So when a new one comes to town, we would fill up very quickly, and we would have a large percentage of Medicaid patients. And then over time, as you became a partner, then you could limit your practice to certain types of insurance.

And that was an independent decision. And many of the docs, as soon as they got to that point, they would limit their Medicaid just by sheer, you know, busy-ness, one, and two, the cost. You know, viability, you have to not grow to be entirely Medicaid; otherwise, it would be very difficult to survive.

Q. So what impact did the Saltzer policy with respect to partners have on the taking of new Medicaid patients by partners at Saltzer?

A. So every time we had a new physician that was an employed physician, the benefit to the Medicaid population was realized. When we didn't have a new employed physician in our pediatric group, then there was limited access to Medicaid.

Q. And so what is the policy, now that Saltzer has

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become affiliated with St. Luke's, with respect to taking Medicaid patients?

A. This is probably my most exciting part of being affiliated with St. Luke's is I don't have to look at it anymore. I don't have to worry about Medicaid and I don't have to worry about self-pay because there is no policy that would restrict that. I get paid whether it's an insured patient, whether it's a self-pay patient, whether it's a no-pay patient, whether it's a Medicaid patient. I get paid the same.

Q. So what is your testimony with respect to the effect of the St. Luke's payment structure to you on the ability of Saltzer physicians to take self-pay patients?

A. I truly believe it enhances their ability to come and seek pediatric care.

Q. And why is that?

A. Having a patient that was self-pay was very difficult. Canyon County has a lot of uninsured patients that, quite honestly, can't afford medical care. And so assuming them into your practice meant that some portion of the time you wouldn't be paid.

Q. Were you ever told by anyone at St. Luke's that if you treated too many Medicaid or self-pay patients, your compensation would go down?

A. Absolutely not.

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Q. Now, Dr. Patterson, as a general pediatrician, do your patients sometimes require hospitalization?

A. Yes, sir.

Q. Where do you send patients who need to be hospitalized?

A. I have admitting privileges at Saint Alphonsus Nampa facility.

Q. And how, if at all, have your admissions practices changed since Saltzer's affiliation with St. Luke's?

A. Not at all.

Q. How do you decide where to send a patient, which hospital to send a patient to?

A. So patient choice is important. The next issue would be acuity of care. And certainly if they need an ICU, whether it be a nursery ICU or pediatric ICU, the Saint Alphonsus Nampa facility doesn't include that.

And you know, other times the care will just require a pediatric subspecialist, which they don't come to Saint Alphonsus Nampa, so we need to have them go downtown.

Q. So can you estimate roughly what percentage of your pediatric patients that are hospitalized are hospitalized at Saint Alphonsus Nampa?

A. So if it's an admission that comes from a patient that I see in an outpatient setting, it's almost all of them.

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Q. Almost all of them go to Saint Alphonsus?

A. Go to Saint Alphonsus Nampa. It's very convenient. It's out my back door. I can see them morning, noon, and night. And it's a 50-foot walk for me. It's incredibly convenient.

Q. So how, if at all, do you expect your practice of sending almost all of your patients who require hospitalization to Saint Alphonsus Nampa -- how do you expect that to change over the next year or two?

A. Not at all. Saint Alphonsus Nampa is the only hospital in Nampa, and our patients are going to be admitted there as long as we are able to do that.

Q. Has St. Luke's ever sought to influence your admission patterns to hospitals in any way?

A. Absolutely not.

Q. During the discussions between Saltzer and St. Luke's, how important was it to you that you be able to continue to be able to refer patients to Saint Alphonsus Nampa after the affiliation with St. Luke's?

A. So, in essence, it would have been a deal-breaker for me if I wouldn't have been able to continue to admit patients to Saint Alphonsus Nampa and take care of the newborn population there.

Q. And why would that have been a deal-breaker?

A. Because that's where my patients are. I get my

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referral pattern. I get referrals from the nursery. I admit my patients there. It was important to me to continue to be able to do that.

Q. Did you raise that issue with St. Luke's during the discussion about the possible affiliation?

A. We did.

Q. Did you expect that to be a sticking point with St. Luke's?

A. We were worried about it, and it quickly became a nonissue when we, you know, got word back from St. Luke's that that wasn't an issue at all, that they would not ask us to stop that.

Q. Let me turn now, Dr. Patterson, to your compensation. I believe we have already discussed the fact that your compensation is based on a guarantee, and then you can get an additional amount based on the RVUs that you performed. Was that your testimony?

A. Yes.

Q. When Saltzer entered into its agreement with St. Luke's, what was your understanding of whether quality considerations would become part of your compensation in the future?

A. For me, it was expected. I was already part of the Patient-Centered Medical Home Collaborative. That was an effort that the collaborative was working towards. It's

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an effort that the nation is working towards. And it's something that I looked forward to and expected and welcomed.

Q. Do you have any understanding of why quality considerations weren't built into the compensation package at the outset of the relationship with St. Luke's?

A. So, again, the population in Nampa, outcomes have not been studied at this point. And so it takes time to develop what the outcome measures would be, and so it wasn't something that could be established at the time.

Q. Where do things stand now in terms of moving towards some element of value compensation in your -- in your compensation?

A. So Saltzer Medical Group has an addendum to the PSA agreement with St. Luke's that we would put up to 20 percent of our income at risk in a quality-based, value-based compensation model.

Q. Under your current compensation arrangement, does your compensation depend on whether you refer outside of St. Luke's?

A. No.

Q. Is your compensation -- let me put it this way: How, if at all, is your compensation affected by where you refer your patients for lab tests?

A. There is no effect at all.

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Q. How, if at all, is your compensation affected by where you refer your patients for imaging?

A. Again, no effect.

Q. One final topic, Dr. Patterson. Are you aware that the plaintiffs are seeking divestiture of Saltzer from St. Luke's?

A. Yes. It's a daily stress for me as a pediatrician.

Q. Is it something you think about?

A. Every day. I spend time in prayer every day hoping that I can continue to do what I do.

Q. How would divestiture -- if this court were to order it, how would divestiture of Saltzer from St. Luke's affect Saltzer?

A. This is the point that creates so much stress for me, is the magnitude of the effect. One, if Saltzer can survive -- and I have daily reservations about whether we would be able to survive if we divest from St. Luke's -- we're in a different setting. We are not the Saltzer from preaffiliation anymore. We're a completely different group.

If we do survive, best-case scenario, we're going to be fighting so hard to survive with a fee-for-service structure, that we're not going to be able to compete.

What's more, the cost of rejoining Saltzer, to me, just creates a lot of heartburn because our overhead went up

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when we lost all of our specialists. In addition to that increased overhead, now we have increased overhead to buy back all of our stuff, to rehire employees, to really reestablish.

So my overhead is going to go up many fold, and I just can't sustain that personally. So I'm afraid that we're not going to be a very good competitor in the community, which is going to impact our income even further.

Q. What effect would divestiture have on your efforts to transition to value-based delivery of care?

A. So, again, you know, I think we lose the ability to seek a value-based delivery care model, a patient-centered medical home. I think recruitment is going to be more difficult again, just with the changing emphasis on being part of a health system by applicants. My community outreach, I'm going to be struggling to meet that increased overhead, so I'm going to have to really pick and choose what I sign my name to to support.

And then I think, lastly, the biggest impact on the community is just the access to care. I -- I have a huge stress that overwhelms me at times about what happens if I can't continue as Saltzer. I came to Saltzer 15 years ago with the intention of retiring from there.

I think about my patients that are already anxious about whether I'm going to continue to be able to care for

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their families because they are reading the newspaper.

I think access to care is going to decrease. I'm certainly not going to be able to be open to every self-pay and Medicaid patient. Again, I'm going to have to do some management of that so that I can afford to survive.

Q. And how would divestiture of Saltzer affect Dr. Thomas Patterson?

A. So I went into medicine to help children. They are the most vulnerable population, and this has sidelined my ability to do that. I'm closer than ever to being able to have the resources to do a patient-centered medical home, to get out of this rat race that I was warned about when I left my residency program, that I would be so busy trying to see volume that I wouldn't be able to continue to care for kids the way I wanted to.

And you know, I have got three children with 20 student years in a Christian school. If I have to leave the community, that is a huge impact on my family. We have got four generations in Nampa. It's my home now. I'm an import from Arizona, but it's my home now, and I don't want to go somewhere else. But I feel like my ability to practice the best kind of medicine I can for my patients is threatened by this.

MR. BIERIG: Your Honor, I have no further questions of this witness at this time.

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Thank you, Dr. Patterson.

THE COURT: Cross, Ms. Duke.

MS. DUKE: Yes, Your Honor.

May we please switch over to Table 1.

CROSS-EXAMINATION

BY MS. DUKE:

Q. Dr. Patterson, good afternoon. My name is Keely Duke, and I am one of the attorneys who represents the Saint Alphonsus plaintiffs in this case. All right? You and I haven't had a chance to meet yet, so --

A. Good to meet you.

Q. With respect to the unwind that you were just talking about related to Saltzer, you have not seen any financial analysis regarding how long Saltzer could stay in business independently if the transaction were unwound; correct?

A. There has not been a formal evaluation; however, the month that we were independent without our income ability from our surgical specialties, I borrowed money from my retirement to take a paycheck that month.

Q. Sure. But at this point, you have not seen any type of financial analysis that has been provided to you by Saltzer or St. Luke's with respect to how long Saltzer could stay in business independently if this transaction was unwound --

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A. No.
Q. -- yes or no?
A. No.
Q. So that's correct, that you haven't seen such an analysis?
A. I have not seen an analysis. I am not aware of it.
Q. Now, you received money for the share buyback and your goodwill through part of the agreement that Saltzer reached with St. Luke's; correct?
A. Yes.
Q. And that tallied to what number for you, personally?
A. I can't remember. I know it was in the 128-, -9,000 range.
Q. And that's money that you don't need to pay back; correct?
A. That's money that, if I leave, I would have to pay back.
Q. Right. But if you remain at Saltzer, you do not owe that money back; correct?
A. I do not.
Q. Now, let's chat about recruitment in the Nampa area. You believe that it is easier to recruit pediatricians to Meridian than it is to Nampa; correct?

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A. Yes.
Q. And you also hold the opinion that there is a shortage of pediatricians in Nampa; is that correct?
A. Yes.
Q. And you feel that it is important to specifically offer a pediatric option separate from family medicine in Nampa; right?
A. In Nampa there are a lot of family physicians who are caring for children. There are certain children who family physicians and pediatricians alike would agree need a pediatric medical home.
Q. So you would agree that it's important to offer a pediatric option to the residents in Nampa?
A. Yes.
Q. You also feel that it's important for pediatric patients to have care close to home, don't you?
A. Yes.
Q. Now, if St. Luke's builds a new hospital in Nampa, would you anticipate that you would also support that hospital?
A. So that's long term. I have got short-term concerns before another hospital option is available. But, again, as I do now, patient choice is my first question. So if my patient says, "I want to be admitted to Saint Alphonsus," I'm going to do my best to admit them to Saint

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Alphonsus Nampa. If they have a St. Luke's choice, currently they would go to St. Luke's Meridian or downtown, but if there is a St. Luke's pediatric ward, then that option would be available.
If you go back to when St. Luke's Meridian opened up, my call group in Nampa split so that we could cover both hospitals. And in the early points of this, our pediatricians had talked about if there is a St. Luke's hospital, we would again figure out a split, knowing we would need to recruit more of us, but to cover both hospitals.
Q. Sure. Let me put up the web page real quick, and I'll represent to you that this is --
MS. DUKE: It's just a demonstrative exhibit, Your Honor.
THE COURT: But it is marked, has an exhibit number assigned?
MS. DUKE: It will be 3075, Your Honor.
BY MS. DUKE:
Q. This is pulled off of the website. And you would agree with me that Saltzer certainly has a website; correct?
A. Yes.
Q. And that Saltzer -- part of the purpose of having that website is to advertise to its patients; correct?
A. Our website I don't think is very robust in that

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effort.
Q. Regardless, whether it's robust or not, one of the goals of the website is to -- if patients are out Googling or they want to look up a physician, that they can glean information about you and your group; correct?
A. Yes.
Q. And the goal in doing that with respect to the website -- certainly Saltzer will talk about its quality on the website and the -- strike that.
Certainly Saltzer will indicate on the website the quality that it can provide to its patients; correct?
A. Yes.
Q. And that's in the hopes that those patients will decide, "Yes, I want to go see a Saltzer physician"; right?
A. Yes.
Q. "I want to see Dr. Patterson as my pediatrician"; right?
A. Yes.
Q. And things that you've done and that you've done prior to the St. Luke's acquisition to improve your quality is you've been a good doctor; right?
A. I believe so.
Q. You practice what you believe to be good medicine?
A. To the best of my ability.
Q. And you were doing that prior to the acquisition

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with St. Luke's; correct?
A. Yes.
Q. And you also -- despite the fact you weren't aligned with St. Luke's at the time, you also engaged in various initiatives to advance child health and welfare throughout this state; correct?
A. Yes. That's how I'm built.
Q. Excuse me?
A. That's how I'm built.
Q. That's in your genetic code, isn't it?
A. It is part of me.
Q. And that was as an independent physician, you were involved in the immunization -- statewide immunization program; right?
A. Yes.
Q. And that's what's referenced there if you look in the -- on the website; it's talking about your advocacy for immunizations throughout the state?
A. Yes.
Q. Now, this immunization quality improvement initiative started prior to St. Luke's acquisition of Saltzer; correct?
A. Yes.
Q. And you played a fairly integral role in it here in the state of Idaho?

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A. I'm president of the American Academy of Pediatrics Idaho Chapter, and it runs through the AAP Idaho Chapter. So, yes, I was involved in it.
Q. And this initiative for immunizations has a number of participating clinics, doesn't it?
A. Across the state. But I think it's important to say that my group, two of our pediatricians participated in this. One, it costs money to participate in it; and, two, it costs time. So two of us had buy-in to wanting to improve immunization in our state --
Q. And the others did not?
A. -- in our practice. Because of time and money, the others could not afford to and did not choose to participate.
Q. It's not part of their genetic code?
A. I can't speak for their genetic code. But, you know, the time constraint and the money constraint were the things that were told to me by my colleagues as the reason they can't join it.
Q. But you and another colleague certainly did, didn't you?
A. Yes.
Q. As independent physicians; right?
A. Yes, two of us.
Q. And that initiative looked at key immunization

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rates, such as missed opportunities and immunization status recorded at each visit; right?
A. Yes.
Q. And those were reported to those participating clinics on a monthly basis; correct?
A. Yes.
Q. And the purpose of the initiative was to improve outcomes related to childhood immunizations; right?
A. Yes.
Q. And the goal of the initiative was to inform those that are participating about best past practices with respect to immunizations?
A. Yes.
Q. And then to take those best practices and apply them to their own individual practices throughout the entire state; right?
A. Yes. However, in fee-for-service, we're all busy trying to see volume. And so, honestly, there was not a lot of crosstalk to my other colleagues. So the ones of us that are doing it are the ones of us that are benefiting from it.
Q. Sure. And the goal of it is for folks to take that information and to take it back to wherever their clinic may be -- in Sandpoint, in Boise, in Lewiston, in Pocatello -- and to implement those best practices?
A. Yes.

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Q. And there were other independent clinics that were not owned by hospitals that were participating in that program; correct?
A. I cannot recall all of the clinics involved, but I know we were part of it.
Q. Certainly you weren't the only independent groups involved in it; correct?
A. Primary Health was involved in it.
Q. And they're independent as well?
A. Yes.
Q. You also participated in an asthma initiative, didn't you?
A. It's one of three of these that is planned through the American Academy of Pediatrics through a CHIPRA grant that we share with Utah.
Q. You were involved in that initiative prior to St. Luke's acquisition with respect to Saltzer; correct?
A. Yes.
MS. DUKE: Dr. Patterson, thank you very much for your time today.
THE WITNESS: Thank you.
THE COURT: Redirect.
MR. POWERS: Your Honor, I just have a couple questions.
THE COURT: I'm sorry. Yes, Mr. Powers.

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MR. POWERS: Thank you.

CROSS-EXAMINATION

BY MR. POWERS:

Q. Dr. Patterson, along those same lines as Ms. Duke was asking you questions on, you have always practiced -- based on your training, you have always practiced in a way that you would never go ahead and order studies or order ancillary services which you felt would not change the patient's -- the quality of the patient's care; correct?

A. Yes.

Q. You have never ordered studies that you felt may not be necessary for the patient; correct?

A. I do not order a study unless I think it's going to change the outcome of the patient.

Q. Even though you weren't aligned with any system in the last 15 years, that's always been your practice; correct?

A. Yes. That's how I was trained.

Q. And you know that morally and ethically and legally, that's your obligation; correct?

A. I would practice no other way.

Q. And you expect that of all the other physicians that you practice with and that you're associated with; correct?

A. I feel it's an important part. Anyone that takes

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an oath to practice medicine ought to have the same values.

Q. And that's the way you and the Saltzer physicians at Saltzer have practiced over the last 15 years; correct?

A. We have been 40-odd physicians with our own shingle hanging on a single shingle, Saltzer. So there is a wide variety of practices than just our different providers.

Q. And you would never practice with someone who was acting in an illegal way, would you?

A. I would not.

Q. And you would never practice with someone who was medically unethical, would you?

A. No.

MR. POWERS: Thank you. No more questions.

THE COURT: Mr. Bierig.

MR. BIERIG: No further questions, Your Honor.

THE COURT: Dr. Patterson, thank you. You may step down. I appreciate your being here.

Call your next witness.

MR. BIERIG: Your Honor, I have been looking forward to this moment for the last four weeks. I am pleased to report that we are now calling our last live witness, Dr. Harold Kunz.

THE COURT: Sir, would you please step before the clerk and be sworn. This way is probably faster.

HAROLD VENE KUNZ,

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having been first duly sworn to tell the whole truth, testified as follows:

THE CLERK: Please state your complete name and spell your name for the record.

THE WITNESS: Harold Vene Kunz, K-U-N-Z. Middle name is spelled V-E-N-E.

THE COURT: You may inquire, Mr. Bierig.

MR. BIERIG: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. BIERIG:

Q. Good afternoon, Dr. Kunz.

A. Good afternoon.

Q. What is your profession?

A. I am a physician.

Q. And do you have a medical specialty?

A. I specialize in family medicine.

Q. Could you briefly describe your education since high school.

A. I attended Ricks College in Rexburg, Idaho, from 1972 to '73 and from 1975 to '76. I then attended Brigham Young University in Provo, Utah, and graduated with a bachelor's of biology in 1977. I entered medical school at the University of Washington at Seattle in 1978 and graduated in 1982.

Q. Then what did you do after graduation from medical

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school?

A. I was accepted into an internship and residency program at the University of Utah-affiliated hospitals in Ogden, Utah, at McKay-Dee Hospital. And subsequently I joined the -- began my active duty service in the United States Air Force in 1985 through 1989 at Fairchild Air Force Base.

Q. What did you do in 1989?

A. In 1989 I moved to Nampa, Idaho, and joined Medical Center Physicians, now Saltzer Medical Group.

Q. So you have been a primary care physician with Saltzer since 1989?

A. Yes, sir.

Q. Do you serve on any committees at Saltzer?

A. Yes. I am the current chairman of the finance committee, and as such, I also serve on the executive committee. From about 2000 until 2008 I was also on the executive committee, and I was the president of Saltzer Medical Group between 2005 and 2008.

I serve on the St. Luke's-Saltzer Operations Council, and I also serve as a site manager for the family practice department at St. Luke's-Saltzer.

Q. Let's go back, Dr. Kunz, to the period roughly 2011. Do you know why Saltzer Medical Group was interested in affiliating with a healthcare system at that time?

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A. Yes. We had been, as a group, trying to practice good quality healthcare for over 50 years. And in that time, we had developed some systems and programs and had some tools that we thought we were doing a pretty good job.

But healthcare delivery has changed in the last 10 or 12 years, and it became clear to us that we had good tools but not good enough, and we needed to change how we were approaching our -- our business model.

We knew that we needed to have robust medical records and health information technology, and the tools that we had just weren't adequate. So we knew that we would have to upgrade, but we just didn't have the money or the resources to buy the kinds of information technology equipment that we needed. Those are usually reserved for groups of doctors of 200 or 300 in size. So we started looking for an integrated healthcare system that could help us to obtain those goals.

In addition, we also were seeing a difference in the way that healthcare reimbursement was happening. And volume-based, fee-for-service kinds of programs were not going to be sustainable, so we knew that we needed to look for some value-based kinds of reimbursement and healthcare delivery systems. So, again, that's an integrated system that is able to offer that.

And then we noticed kind of a change in our

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recruitment. In order to replenish and to add programs and doctors -- we were interviewing candidates, and ten years ago these candidates wanted to be part of a separate sort of independent fee-for-service kind of group. But we really saw that pool of applicants dry up. And everyone wants now as they are interviewing to be part of a healthcare system.

And so those were the reasons that we felt that we needed to join with a tightly integrated healthcare system.

Q. So you initiated discussions with St. Luke's?

A. Yes.

Q. And during those discussions, what, if anything, did St. Luke's suggest would be the benefits of a -- of an affiliation with Saltzer?

A. Well, actually, the things that I just mentioned we knew would be benefits, so that's part of the reason that we wanted to talk to St. Luke's. We knew they had a robust platform for health information technology with -- and they started the Epic system, which is really the highest rated health information technology system available. We thought that would be great for us.

Also, we knew that they were working in a value-based healthcare program. They had the only ACO in the state, accountable care organization in the state. And it would be much easier for us to recruit doctors and to replenish and to expand our healthcare in Nampa and

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Canyon County if we were affiliated.

But I think the biggest advantage that we could see that they could offer to us was that we could take all of these programs and systems, and we could bring them into Canyon County to our patients where they hadn't ever been available before, and that was exciting to us.

Q. During Saltzer's discussions with St. Luke's in the period 2011-2012, to what extent was anything discussed that one of the benefits of affiliation would be the ability to raise price to commercial payors?

A. That was never discussed. In fact, quite the opposite. St. Luke's always in their discussions reiterated that we would want to stress better health, better care, and lower costs.

Q. Did Saltzer -- at any time in that 2011-2012 period, did Saltzer approach Saint Alphonsus about a possible affiliation?

A. Yes.

Q. And when was that?

A. I believe it was in the fall of 2012.

Q. And do you know why that was?

A. Yes. Some of the members of our group felt that it would be important, since we had been having discussions about affiliation with St. Luke's, that we allow Saint Al's or ask Saint Al's to give us a proposal as well.

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So St. Luke's agreed to let -- in our discussions with them, they agreed that we could go ahead and do that.

Q. So, in other words, you told St. Luke's that you would also be talking to Saint Alphonsus? Is that what you said?

A. Yes. As a matter of fact, I believe St. Luke's supplied some data and information to Saint Alphonsus before they made their proposal so that we could hear proposals based on the same data.

Q. And did Saint Alphonsus make an offer to acquire Saltzer?

A. Yes.

MR. ETTINGER: Your Honor, I was going to let this go a couple of questions, but we're beyond the scope of what's allowed under the motion in limine, I believe.

THE COURT: Well, as I have noted on several occasions, I'm allowing some leeway into this, but are you referring to the unclean hands issue?

As I previously ruled, I'm going to give some leeway on this issue so long as it's tied to an issue other than unclean hands.

Go ahead and proceed.

MR. BIERIG: I want to be clear, Your Honor, we are not making an unclean hands defense.

BY MR. BIERIG:

Q. Did Saint Alphonsus make an offer to acquire Saltzer?

A. Yes.

Q. Do you know how the financial terms of that offer compared to the terms offered by St. Luke's?

A. They were virtually identical.

Q. So why did Saltzer accept the St. Luke's offer rather than the Saint Alphonsus offer?

A. Well, I think there were a number of reasons. First of all, we wanted to be -- as Saltzer, we wanted to be involved with a -- an organization or affiliated with an organization that had the same vision that we did about moving from fee-for-service to value-based care, and we didn't really see that so much in the Saint Al's offer.

We also felt like we were more of a valued partner and more of our input was listened to and would be listened to and taken into account in the discussions with St. Luke's than we had previously felt with Saint Al's.

And plus, there were just some things in the Saint Al's offer that were troublesome to us. One of them was a 90-mile noncompetition clause that basically made it impossible if anyone wanted to opt out of their contract to practice medicine anywhere between Twin Falls and --

MR. ETTINGER: Your Honor, this is not merely -- if it's not an unclean hands defense, it's

certainly irrelevant. And our motion explained why these issues are irrelevant. He is going on and on about Saint Al's.

THE COURT: Well, Counsel, I think my prior ruling indicated that I would allow some testimony on this subject matter. The one issue that immediately comes to mind was kind of an implicit suggestion that a premium was paid in the acquisition for exclusive referrals; and, therefore, the terms offered by Saint Al's would be relevant in terms of kind of establishing a fair market value.

I think that there was also questions about efficiencies of one proposal versus the other that I think would inform the court's decision on that.

I'm going to, Mr. Bierig, suggest that you kind of direct the witness testimony in that fashion and that we not go too far afield, or I think Mr. Ettinger is correct it would be irrelevant. Not necessarily in violation of the court's prior order in which I said that evidence of unclean hands is not going to be admitted, but that testimony concerning the Saint Al's offer would be considered for these other purposes.

MR. BIERIG: And I agree with that, Your Honor. But if I just can respond to counsel for Saint Alphonsus, one of the issues in the case is: What is the relevant geographic market? And the fact that there was a 90-mile

covenant not to compete would at least be a basis for an argument that Saint Alphonsus thought that the -- that the relevant market was 90 miles from Nampa. So I think that this is not in any way an unclean hands argument.

THE COURT: Let's go ahead and proceed.

BY MR. BIERIG:

Q. So I think you testified -- well, on the 90-mile covenant not to compete, isn't it true that Saint Alphonsus indicated it would waive that requirement for Saltzer?

A. Yes, that is true. However, we sort of felt that it shouldn't have ever been included anyway, and those sorts of things just didn't generate a great deal of trust.

Q. You indicated that you felt that with St. Luke's you would be equal partners. What was the basis for that feeling?

A. We had had occasion in the past to try to work with St. Luke's on some other projects, and in doing so, we had always felt that they had been open and transparent. And in our dealings with them, they had been willing to listen to what we had to say and to value our input and opinion.

Q. Dr. Kunz, do you refer patients to physician specialists?

A. Yes, I do.

Q. And how do you decide to which specialist you will

refer a patient?

A. I determine, first of all, what the patient's needs are and where they will get the best care. And then I have a discussion with the patient about if they have any -- if they know anyone in that area that they would like to see, and then together we determine who they will see.

Q. How important was it to you when you were in discussions with St. Luke's that you be able to refer to whatever physician you chose?

A. I think that's critically important. It's a -- an element of trust that I have with my patient that I'm always going to give them the advice that I think is best for them and for their health.

Q. Did you make that view known to St. Luke's during the negotiation process?

A. Yes, sir.

Q. And how did St. Luke's respond?

A. St. Luke's has never indicated in any way that they want to direct how I refer my patients and to whom I refer my patients.

Q. How, if at all, have your referrals to medical specialists changed since Saltzer's affiliation with St. Luke's?

A. Well, I have been able to be introduced to some new consultants, so I think I have a little bit wider field

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of consultants to pick from. But, in general, I don't believe that my referral patterns have changed in any significant way.

Q. So to what extent do you still refer to physicians associated with Saint Alphonsus?

A. I refer to them frequently.

Q. Do you have any reason to believe that the referral practices of the other primary care physicians who treat adults at Saltzer have changed in a different way since the affiliation?

A. I don't have any reason to believe that.

Q. Dr. Kunz, do your patients ever require hospitalization?

A. Yes, my patients require hospitalization.

Q. And how do you decide which hospital to send your patients to?

A. Well, when I see the patient and I determine that they need to be hospitalized, I will ask them if they have a hospital preference. And if that hospital can provide the services and the care that the patient needs, then I will generally refer them to that hospital.

Q. And during the discussions with St. Luke's that led up to the affiliation, did you make it known to St. Luke's that you wanted to be able to continue making referrals to Saint Alphonsus Nampa?

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A. Yes. In fact, we made it known that it was very important to us that we be able to do that.

Q. And how did St. Luke's respond to -- to that point?

A. Their response was the same as with the referrals to other physicians. They didn't want to interfere with our ability to refer to any hospital.

Q. How, if at all, have your referral patterns to hospitals changed since the affiliation with St. Luke's?

A. They haven't changed at all, I don't believe.

Q. And what percentage of your patients who require hospitalization are hospitalized at Saint Alphonsus Nampa?

A. I would say between 60 and 70 percent.

Q. Has St. Luke's ever done anything to discourage you from referring patients to Saint Alphonsus Nampa?

A. Never.

Q. You mentioned earlier that you are a member of the Joint Operating Council.

A. Yes.

Q. What exactly is the Joint Operating Council?

A. It's a committee composed of equal member -- equal representation of members from the St. Luke's administration and also from the executive committee of Saltzer Medical Group.

Q. Does the Joint Operating Council track referrals

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of patients from Saltzer physicians to other physicians and to St. Luke's Nampa?

A. Yes. And Saint Al's Nampa as well. It was, I believe --

Q. Sorry for interrupting. I may have said "St. Luke's Nampa." I meant Saint Alphonsus Nampa. I apologize.

A. Yes. Oh, that's fine. It was, I think, the request of the court that those referral patterns be followed, and that is the committee where those referrals are tracked.

Q. When you say the request of the court, you're referring to a request of the court made at the preliminary injunction hearing?

A. That's my understanding, yes.

Q. So what has the Joint Operating Council determined with respect to referrals by Saltzer physicians, both to other physicians and Saint Alphonsus Nampa?

A. The referrals to Saint Alphonsus Nampa have remained proportionately stable through the first seven months. I don't remember seeing any data past July, but January through July, the proportion of admissions to Saint Al's Nampa and St. Luke's facilities remained the same, didn't change in any significant way.

Q. And what is that proportion roughly?

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A. Roughly 60/40 to Saint Al's Nampa.

Q. So 60 to Saint Al's Nampa, 40 to St. Luke's?

A. Roughly.

Q. Okay.

A. As far as other referrals go, about 40 to 50 percent of referrals go to St. Luke's physicians; about 20 to 35 percent go to Saint Al's; and of the group that has no preference, about half of that group goes to Saint Al's physicians and about half to St. Luke's.

Q. Now, you just testified, if I understood you correctly, that a majority of your patients who require hospitalization you send to Saint Alphonsus Nampa; is that correct?

A. That is correct. The majority are admitted at Saint Al's Nampa.

Q. So are you aware whether Saint Alphonsus's records indicate that you are sending these patients to Saint Alphonsus Nampa?

A. I am listed as the provider, not as the admitting physician.

Q. Even though it is you who makes the decision as to where the patient is sent; is that correct?

A. That's correct. I make the decision of where to send the patient, and then the hospitalist at that hospital admits the patient.

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Q. Can you explain for the court the relationship between the primary care physician who actually decides where a patient will be hospitalized on one hand as opposed to the hospitalist in the hospital on the other hand?

A. Certainly. I had a couple of occasions to utilize the hospitalist just this week.

When I see a patient who is ill in my clinic and I determine that that patient would benefit from hospitalization and can't be treated as an outpatient, then I talk to the patient and see which hospital they want to go to. And then I call the hospitalist at that hospital and tell them about the patient, and then the hospitalist takes care of the patient's care while they're in the hospital.

Q. What about when a patient goes through the emergency room?

A. The second patient that I sent to Saint Al's Nampa this last week was in my clinic, and I felt that they would very likely need admitted. Talked to the hospitalist. The hospitalist said, "I need more information, so send them to the emergency room."

I sent them to the emergency room where they could have CT scans and other testing done that I couldn't do in my office, and then the hospitalist and the emergency room doctor determined whether or not the patient would be admitted.

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Q. So with respect to the choice of what hospital a patient is sent to, who makes that decision? The primary care physician or the hospitalist?

A. I make that decision.

Q. When you say "I," you're referring to the primary care physician?

A. Primary care doctor, yes, I make that decision.

Q. What about the other primary care physicians at Saltzer?

A. They do it the same way I do.

Q. So what role does the hospitalist play in the decision as to where a patient is sent for hospitalization?

A. The hospitalist has no say in that because I send the patient to the hospitalist. If the hospital happens to be full and can't admit the patient, then they would divert that patient to another hospital, but that's the only way in which the hospitalist would determine where a patient would be hospitalized.

Q. So the source of the decision is basically the primary care physician, not the hospitalist. Am I understanding that correctly?

A. That is correct.

Q. And to what extent was -- would what you have just said be true when the patient arrives through the emergency room?

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A. If the patient arrives after hours through the emergency room, the decision to admit that patient usually rests with the emergency room physician.

Q. But what role does the primary care physician have in directing the patient as to which emergency room to go to?

A. Usually speaking, there will be some contact with the patient with a primary care doctor before that, and the doctor, the primary care doctor, will direct them to which emergency room they should be seen.

Q. How, Dr. Kunz, if at all, has the affiliation with St. Luke's changed the number of Medicaid patients that are seen by Saltzer physicians?

A. Well, in my case, I think I see more now than I did before.

Q. And why is that?

A. Well, Medicaid or self-pay or commercial insurance, after our affiliation, it doesn't matter what payor mix I see. I can see patients from any payor mix, and it -- to me, it's the same. And so I don't have to worry about limiting certain payor mixes to make my practice viable.

Q. Would you say the same is true of your primary care physician colleagues at Saltzer?

A. Yes.

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Q. How, if at all, has the affiliation with St. Luke's changed your delivery of care to your patients?

A. Well, I -- this is where I start to get a little bit excited because with the ability to have access to improved healthcare records and with a system like WhiteCloud Analytics, where I can pull the patient's or my -- my performance up and I can see how I'm performing with my patients in relationship to their treatment of diabetes and high blood pressure and coronary artery disease and asthma and childhood immunizations and just many, many other things I have never had that ability before to see how I compare with national standards with -- with other doctors in the St. Luke's system. And what that can do is it actually makes me change how I approach healthcare, makes me focus on more important -- more important things, and so I can tell how many of my patients I should be telling to take their aspirin when they have coronary disease and diabetes. And that makes a big difference for them in the long run.

I learned in looking at WhiteCloud Analytics that I may have been telling my patients that, but I wasn't telling enough of them to do that. And it's changed the way I approach the way I practice medicine, and that's exciting for me because that way I can make an impact on the health of all of my patients.

Q. Can you give an example of that?

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A. Sure. For example, there is one metric in that diabetes profile that asks: How many of your patients have an A1c of greater than 9 percent? Well, I have always thought that I had done a pretty good job in keeping my diabetic patients under control. And I found that I was not doing as well as I thought I was, and I didn't have any way of knowing that before I had access to this information.

And that's -- that's just one metric in a whole series of things of diseases and chronic conditions that I can treat. And with that knowledge now, I can contact those people. I can focus their treatment. I can get them in to see diabetes educators. I can bring to bear the whole weight, if you would, of an integrated healthcare system to help that patient, and that's an exciting way to do things.

Q. Now, do you have access to -- do you participate fully in the Epic electronic health record at this point?

A. No. Again, we haven't been allowed to do that because, again, I think the -- it was part of the court's decision to not integrate that fully until after the decision had been made about this case.

Q. What do you know about Epic?

A. I know that Epic is the number-one rated electronic health technology platform available. It's used by several university systems -- the University of Utah; Stanford uses it; Kaiser uses it.

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And I read in an article that Epic is the preferred healthcare platform for health technology. In three out of four of the current ACOs, they -- they are either now using it or are moving to it.

And I have a partner in my group who trained on Epic, and he is just wildly excited about getting it back because it just gives us so much more power and so much more ability to care for our patients.

Q. How would you anticipate that being on the Epic EHS would change your delivery of care to patients?

A. Well, I think that I have just been able to sort of scratch the surface with what the WhiteCloud Analytics information can do for me.

If I had Epic -- Epic actually allows us to get accurate data and then put it in a format, a platform where we can use that data to measure our performance. Without the accurate data and without the ability to integrate that data, it's all just a guess.

So I can -- I can try all I want with the current systems that we have, and we can try and wire a whole bunch of them together that don't have that capability, but we still aren't going to get the same type of power and capability that we would get if we had the Epic system.

Q. I want to go back to referrals for a minute. What would you do, Dr. Kunz, if St. Luke's sought to prevent you

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or discourage you from making referrals to Saint Alphonsus?

A. I wouldn't do that. I would refer my patient to where my patient needed to go.

Q. What would you do if St. Luke's tried to get you to admit patients to one of its facilities where you concluded that admission of a patient to such a facility was not warranted by the patient's condition?

A. I have never done that, and I -- that's a behavior I will never engage in.

Q. And do you have any reason to believe that your colleagues -- any of your colleagues would take a different view on that?

A. I believe they all feel the same way I do.

Q. I would like to move on to another subject. Was there a time when you treated a substantial number of patients associated with Micron?

A. Yes.

Q. When was that?

A. Before 2008.

Q. What happened in 2008?

A. Micron developed a new insurance product, and Saltzer Medical Group was dropped from that product.

Q. And before Saltzer was not -- was not in the Micron network, approximately how many patients did you see from Micron?

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A. Approximately 60.

Q. So then what happened to those 60 when Saltzer went out of network with Micron?

A. They moved the providers closer to Micron.

Q. And when you say "closer to Micron," where -- what are you referring to?

A. Meridian and Boise.

Q. How many Micron patients do you currently see?

A. I see one family.

Q. Do you know how much extra money a Micron patient would have had to pay to have seen you as compared to an in-network Micron provider?

MR. ETTINGER: Your Honor, I think there is no foundation for this witness to --

THE COURT: Well, the question is do you know, yes or no; and then you'll have to explain how the witness knows.

MR. BIERIG: That's exactly what I intend to do, Your Honor.

THE COURT: Proceed.

THE WITNESS: Yes.

BY MR. BIERIG:

Q. And how do you know that?

A. I didn't know that until just recently. But in preparation for these proceedings, we looked into that, and

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I found out that the difference in copay is $20.
Q. Did Saltzer ever get back into the Micron network?
A. Yes, in 2011.
Q. And to what extent have the Micron patients come back since 2011?
A. I still see the one family.
Q. Dr. Kunz, have you given any thought to the effect on Saltzer if this court were to order St. Luke's to divest Saltzer?
A. Yeah. I think about that every day. I think it would be disastrous for Saltzer if that were to occur.
Q. And when you say "disastrous for Saltzer," what do you mean?
A. Well, there are a number of things that I am concerned about. First of all, is we have invested a lot of time and effort in creating a vision of where we think our business needs to go and the kinds of healthcare systems and so forth that we need to develop. And if we are forced to divest, then I have to go back to that same model of high-volume, fee-for-service kinds of healthcare, which I really don't think is the best way to go, and I don't think it's sustainable. I think that model for healthcare is going to go away.
Also, I think that in order to recapitalize, we would have to borrow huge amounts of money. We would still

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have the same bills that we have to pay now, but we would have to do it with a third less income because the surgeons and orthopedic surgeons left.
So I think that, under that burden, there would be a -- probably a very serious consideration amongst myself and my partners as to whether we could stay open and viable, and we would still have four to six months' worth of time that we weren't getting any -- any revenue, per se. Any revenue stream, our accounts receivable would have to build up. We would have to hire 2- or 300 people. We would have to do a lot of those things -- buy back all of our equipment and furniture and so forth. And that would just create an enormous burden of debt. The risk to the partners would be so great that many of them would, I think, want to leave. That would further reduce our revenue. Our expenditures keep going up, our revenue keeps going down, and I think eventually our doors would close.
Q. What impact, if any, would divestiture have on the ability of Saltzer to do outreach programs in the community in Nampa?
A. We wouldn't have any money even to recruit physicians to replenish or replace the physicians that we lost, and we wouldn't have any money to pay the salaries of the partners who stayed for months and months.
I think outreach programs would -- would be --

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would have to be let go.
Q. What impact, if any, would divestiture have on the ability of Saltzer physicians to treat Medicaid patients?
A. Well, Medicaid and low-income patients, self-pay patients already have difficulty getting access to healthcare, and we see a substantial number of those patients. If we aren't available, then those patients won't have any other -- really any other avenues other than to go to emergency rooms or other doctors in Meridian or Boise or Caldwell, elsewhere in the Treasure Valley.
I think it would be a tremendous strain on those people, and they may not be able to have access to the same quality care that they have had.
Q. Now, there has been a suggestion made in this case that the benefits -- the kind of benefits you've described of the affiliation between Saltzer and St. Luke's -- could be achieved through a much looser affiliation, kind of a joint venture.
What are your thoughts on the extent to which those benefits could be achieved if Saltzer were divested and some kind of looser arrangement would be -- would go forward?
A. I -- I have no doubt in my mind that a joint venture or some sort of loose affiliation just would not work. In my mind, it's just doomed to failure.
Again, you have to take into consideration that we

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initially, when we were approaching St. Luke's, we looked at doing it as a joint venture, and we studied that very carefully. And through our discussions and through our research, it just became clear to us that unless we could align financial incentives, unless we had vision and leadership, unless we had the appropriate financing -- and these -- these healthcare platforms are just tremendously expensive -- we wouldn't be able to get the same kind of quality care that we could -- that we could get in a closer affiliation with St. Luke's.
And so we just decided that the joint venture idea wouldn't work. And so that's when we started to look toward, you know, closer affiliations, and we could see a vision of -- St. Luke's had the same vision that we did of getting into a value-based kind of reimbursement product and away from fee-for-service.
And so we just felt like that it would not be feasible in any way to just kind of get a bunch of people together and say we're going to form our own ACO with St. Luke's.
Q. One last question, Dr. Kunz. What would the impact of divestiture be on you, personally?
A. Well, I have lived in Nampa now for 24 years, and I love the community, and I -- I'm dedicated to my patients. And I -- having said all of that, if I can't practice the

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kind of medicine that I think I need to practice, then it's going to be really hard to stay, especially if I can't -- if all of these things with divestiture really happen the way I see that they -- they can, I don't know that I could stay.

MR. BIERIG: Thank you. Thank you very much. Thank you, Your Honor. No further questions.

THE COURT: Mr. Ettinger.

MR. ETTINGER: Thank you, Your Honor.

THE COURT: Counsel, we're going to go a little beyond 2:30 so we can get the cross of --

MS. DUKE: Sonnenberg.

THE COURT: Yes. Go ahead and proceed, Mr. Ettinger.

MR. ETTINGER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. ETTINGER:

Q. Good afternoon, Dr. Kunz.

A. Good afternoon.

Q. I was listening very carefully, and I think you used the following words to describe the consequences of a divestiture or unwind. You said "disastrous"; correct?

A. Yes, sir.

Q. You said "concern regarding whether you could stay open and viable"; correct?

A. Yes.

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Q. And you said eventually your doors would close; correct?

A. Yes.

Q. Now, you, in fact, believe that those kinds of views are, quote, "overly dramatic," close quote, don't you?

A. No.

Q. And you, in fact, dismiss them as doomsday scenarios, don't you, Doctor?

A. I do not.

MR. ETTINGER: Why don't we play clip 106, Keely. Your Honor, this is page 78, lines 14 to 23, from Dr. Kunz's deposition.

(Video clip played as follows:)

Q. "What do you recall about the discussion of contingency plans in the Finance Committee?

A. "Well, as I recall this email, Dr. McKinnon was concerned about our clinic becoming financially insolvent if the PSA were blocked and we were left without the surgeons who had then left our group and that would increase our overhead to a point that our group would implode basically or collapse.

"These are sort of doomsday scenarios. Sometimes Ryan has a little penchant to do that."

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(Video clip concluded.)

BY MR. ETTINGER:

Q. Was that your testimony, Dr. Kunz?

A. Yes.

MR. ETTINGER: And why don't we play clip 107, Keely.

Your Honor, this is page 81, lines 5 through 16, of Dr. Kunz's deposition.

(Video clip played as follows:)

Q. "Who was Ryan McKinnon?

A. "Ryan is an ophthalmologist who is a partner at Saltzer Medical Group.

Q. "And were you saying that he has a penchant for being overly dramatic or doomsday-ish?

A. "That's my opinion, yes. He has a penchant for not attending meetings and then listening to rumors and then worrying and coming up with doomsday scenarios about what might happen.

"So, I've had a long history with Dr. McKinnon. He's a good friend and a wonderful doctor. And he just has that penchant, in my opinion, to do those things."

(Video clip concluded.)

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BY MR. ETTINGER:

Q. And was that your testimony?

A. Yes.

Q. And you have not conducted any financial analysis to support your conclusion about divestiture, have you, Doctor?

A. No, but I am the chairman of the finance committee. I do know what our finances are.

Q. I understand. Thank you.

And you did in the finance committee talk about selling off assets if divestiture were to occur and you needed to cover some short-run costs; isn't that right?

A. That was one thought.

Q. Were specific assets identified?

A. What assets we have we would sell.

Q. Were specific assets identified, Doctor? That's my question. Yes or no.

A. I think I mentioned laboratory. I don't remember which other ones.

Q. Okay. And there have been no concrete plans put in place as to what would be done with regard to any divestiture; isn't that right?

A. There have not.

Q. And your view that problems would occur on divestiture is based on the assumption that there would not

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be any successful recruitment of new orthopedic surgeons; correct?
A. I do not believe we could --
Q. Isn't it right that your conclusion is based on the assumption that you could not successfully recruit orthopedic surgeons? Yes or no, please, Doctor.
A. Yes.
Q. Thank you.
Now, Saltzer was profitable in the fiscal year ending 2012; correct, Doctor?
A. Yes.
Q. And, in fact, it's been profitable in every year that you've been at Saltzer; correct?
A. Yes.
Q. Did you mention -- turning to another topic, Doctor. Did you mention in your direct, did I hear correctly, that one reason that you decided to do a deal with St. Luke's was that it had the only ACO in the state?
A. I believe that's what I said.
Q. Do you know when St. Luke's became an ACO?
A. Within the last year.
Q. Was it before Saltzer made its decision?
A. I'm not entirely sure. It was near the same time.
Q. And you talked about the reasons why from your perspective the St. Luke's deal was done. Were you one of

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the physicians who signed Dr. Page's letter where he explained his reasoning for doing the deal?
A. Yes.
Q. It's the case, is it not, Doctor, that about $9 million which were paid to Saltzer physicians as part of the St. Luke's deal is money that the doctors get to keep if there is an unwind; isn't that right?
A. That is correct.
Q. And for you, is that a couple hundred thousand dollars personally?
MR. JULIAN: Objection, Your Honor. Compensation of a physician is AEO. Asking that question probably was as well, but we can supply the figures. It's already in an exhibit. I don't think his compensation --
MR. ETTINGER: Well, I think it's relevant, Your Honor. But it's in the document. We don't need to clear the courtroom for it.
THE COURT: Very well.
BY MR. ETTINGER:
Q. You talked about quality, Dr. Kunz. St. Luke's has only had positive comments about Saltzer's quality; correct?
A. That I'm aware of.
Q. And Saltzer had a quality assessment committee with quality metrics in place before it was acquired by

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St. Luke's; isn't that right?
A. It has a quality assurance committee. I'm not aware of any quality metrics.
MR. ETTINGER: Keely, could you play clip 14. Your Honor, this is page 84, line 25 through page 85, line 9 of Dr. Kunz's deposition.
(Video clip played as follows:)
Q. "Prior to entering into the PSA with St. Luke's, did Saltzer use any metrics to assess its quality?
A. "We did patient questionnaires and satisfaction surveys. We tried to do the Meaningful Use of the medical records. We were involved in that. So, we -- to the extent that we could, we tried to measure ourselves for quality.
"We have a quality -- a QA Committee that handles that and other kinds of quality sorts of metrics. So, yeah, we try to do that."
(Video clip concluded.)
BY MR. ETTINGER:
Q. Was that your testimony, Doctor?
A. Yes.
Q. Now, you mentioned Meaningful Use in that clip. What is the Meaningful Use Program, Doctor?

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A. The Meaningful Use Program is a federal program where electronic medical records are measured and how the clinics and doctors who use them comply with certain standards that are set by the government. And if they comply with those standards and those metrics, then they are eligible to receive compensation from the government.
Q. And that includes a large number of quality metrics, does it not?
A. Well, not in the same extent that I'm talking about quality metrics from the other -- the metrics that are in Meaningful Use have something to do, I guess, with do I ask my patient if -- or do I counsel my patient to stop smoking. I suppose that's a quality metric.
Q. That's a quality metric that this court has heard about in connection with WhiteCloud. But, in fact, that quality metric has been in the Meaningful Use program for some years, has it not, Doctor?
A. For two years that I know of.
Q. Yeah. And Saltzer qualified for Meaningful Use, did it not?
A. It did.
Q. Prior to being acquired by St. Luke's; correct?
A. Yes.
Q. And are you aware that St. Luke's has not qualified for meaningful use on the inpatient side?

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A. I don't know anything about St. Luke's inpatient quality metrics.
Q. And you personally, as well as the other individual physicians in Saltzer, get regular reports on your compliance with the meaningful use metrics; correct?
A. Are you referring to the WhiteCloud clinical integration?
Q. No. I'm talking about what you received in Saltzer before you were ever acquired by St. Luke's.
A. We -- in an effort to try to be compliant, we would receive reports from our information technology people about where we stood in relationship to the qualification for meaningful use.
Q. And that was for each individual physician as to his or her qualification; right?
A. Yes.
Q. And you believe and Saltzer believes that your eClinicalWorks system is state-of-the-art, do you not?
A. When we bought it, it was state-of-the-art. It is not state-of-the-art now.
Q. You still call it state-of-the-art on your website, don't you, Doctor?
A. I haven't looked at the website in a while.
Q. Why don't we pull it up, if we could, Keely.
And do you see this page? This is the Saltzer website,

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Doctor?
A. It appears to be.
Q. And it refers to "Our state-of-the-art electronic medical record." Do you see that?
A. That's what it says.
Q. Is that a false statement today, Doctor?
A. In my opinion, eClinicalWorks is kind of an older-generation electronic medical record. It's not as state-of-the-art as Epic.
Q. What's the latest version of eClinicalWorks that Saltzer has purchased?
A. I'm not aware of that.
Q. Are you on the IT committee at Saltzer?
A. I am not.
Q. So you're really not very acknowledgeable about the details of electronic medical record systems, are you, Doctor?
A. Not as knowledgeable as the people on the IT committee, I suppose.
Q. And one reason why you advertise eClinicalWorks on your website and your electronic medical record is you think that could attract patients; correct?
A. Yes.
Q. And you advertise medical research that Saltzer does on its website as well; isn't that right?

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A. Yes.
Q. And you think that could attract patients; correct?
A. Yes.
Q. And good quality in the modern sense -- achieving quality metrics, using electronic medical records -- those kinds of things are not only good medicine, they are good business because they attract patients; correct?
A. Yes.
Q. Let's talk a bit about referrals, Doctor.
It's your view, is it not, that part of the value of a primary care physician to a hospital system is the access to the primary care physician's patient base for referrals?
A. Could you restate that, please.
Q. Part of the value of primary care physicians to a hospital system is the access that those primary care physicians provide to their patient base for referrals?
A. Yes.
Q. And since Saltzer entered into its PSA with St. Luke's, your personal referrals to the St. Luke's Boise Surgical Group have increased; correct?
A. Yes.
Q. And your referrals to the St. Luke's orthopedic department generally have increased; correct?
A. Yes.

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Q. And your referrals to St. Luke's specialists generally have increased; correct?
A. In those two instances, I think so, yes.
Q. And your referrals to the former Saltzer surgeons have decreased; correct?
A. I still send people to the orthopedic surgeons.
Q. You don't send anybody to Dr. Williams anymore, do you, Doctor?
A. I haven't in a while.
Q. But you don't feel any animosity towards him or the other surgeons, do you?
A. I personally don't, no.
Q. How many referrals have you sent to the orthopedic -- the former Saltzer orthopedic surgeons in 2013, Doctor? Less than five?
A. No. I think it's more than that.
Q. Can you give me a number?
A. This past week, I looked at my -- my records that I received from Saint Alphonsus -- in the past two weeks; pardon me. And I had received five surgical reports from Saint Alphonsus doctors, one of them Dr. Williams, who had operated on my patients.
Q. Now, were these patients that you personally referred to them, or were these patients who happened to use you as a primary care physician and had either utilized

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these surgeons before or self-referred to them?
A. I suspect there was some of both of those.
Q. Okay. So how many cases did you explicitly refer to the former Saltzer surgeons in 2013 -- you, personally?
A. I don't know that.
Q. Any?
A. Yes.
Q. But you don't know at all how many?
A. No, I don't.
Q. Okay. Now, you first obtained admitting privileges at St. Luke's in 2013; isn't that right?
A. I believe that's true, yes.
Q. And you did that in connection with entering into this transaction with St. Luke's; correct?
A. Yes.
Q. And Mr. Bierig asked you some questions you talked to him about -- about reporting to the court. Did you read the court's December order on the preliminary injunction motion?
A. I don't remember reading it exactly, but I have read some of those documents. I can't tell you -- there are a lot of them. I can't tell you which one.
Q. Do you remember the court's four assumptions in that order?
A. No.

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Q. Do you remember anything about referral patterns not changing substantially? Did you hear about that issue?
A. I don't remember that.
Q. Okay. Mr. Bierig mentioned a noncompete and mileage, so that opened the door for me to ask you just a few more questions, Doctor.
You have never personally undertaken any efforts to market your practice in Caldwell, have you?
A. Not to my recollection.
Q. And you have not personally made any efforts to market your practice in Boise, have you?
A. No.
Q. And the only time you can recall ever getting a patient from a Boise-based primary care physician is if the patient moved to Nampa and wanted to establish closer care; isn't that right, Doctor?
A. I suppose that's what I -- yeah, I suppose that's true.
MR. ETTINGER: I have nothing further. Thank you.
MR. POWERS: One question, Your Honor.
THE COURT: Yes, Mr. Powers.
CROSS-EXAMINATION
BY MR. POWERS:
Q. Dr. Kunz, when Dr. Williams was part of your group over the last 15 years, you used to regularly refer patients

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to him; correct?
A. Until he moved his practice to Meridian. Then it wasn't as easy to get people in to him.
Q. But you referred more than 10 patients a year to him before 2012; correct?
A. I believe so.
Q. Okay. And the reason you did that was because you trusted his abilities as a surgeon with respect to your patients; correct?
A. Yes.
Q. You knew it was good for your patients to refer to a surgeon who was highly skilled, like Dr. Williams?
A. Yes.
Q. And at that point in time, you were trying to do what was best for your patients; correct?
A. Yes.
MR. POWERS: All right. Thank you.
THE COURT: Redirect.
MR. BIERIG: Thank you, Your Honor.
REDIRECT EXAMINATION
BY MR. BIERIG:
Q. Dr. Kunz, Counsel for Saint Alphonsus asked you whether your view about the future of Saltzer was based on the assumption that Saltzer could not recruit an orthopedic surgeon.

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Is your assumption about the likely future of Saltzer in the event of divestiture based solely on the ability or inability to recruit an orthopedic surgeon?
A. No. There are many other factors.
Q. And counsel for plaintiff asked you about the quality metrics utilized by Saltzer as an independent group. How has sort of the review of quality metrics been affected by the affiliation with St. Luke's?
A. It's certainly much more robust now. The quality metrics from -- from Meaningful Use are only one aspect of the quality metrics that we use. There are a lot more available to us. Plus, some of the surveys that I was referring to in my deposition were done in 2007.
I mean, there hasn't been any real recent surveys or any -- other than Meaningful Use, any real robust effort on our part to implement more quality metrics.
We simply didn't have the ability to mine the data and get meaningful information from it. It wasn't because we didn't want to. We just didn't have the right tools to do it.
EClinicalWorks can do some of those things, but it's -- it is inadequate to give us the power and the level of quality metrics that we can get from Epic and other systems.
MR. BIERIG: Thank you, Dr. Kunz. I have no

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further questions.
THE COURT: Anything further?
MR. ETTINGER: No.
THE COURT: All right. You may step down. Thank you.
THE WITNESS: Thank you.
THE COURT: That I believe is the last witness for St. Luke's; is that correct?
MR. BIERIG: Last live witness, Your Honor.
THE COURT: All right.
MR. BIERIG: Of course, we don't know what the rest of their case is going to be.
THE COURT: Well, presumably, you will know before the end of the day.
MR. BIERIG: We would hope.
THE COURT: I think we can more than hope. I will require it.
So let's go ahead and call I think the one witness that we were going to call out of order. Was it --
MR. STEIN: Your Honor, while we're waiting for the plaintiffs' next witness, am I correct that now is the time that plaintiffs are required to disclose their rebuttal witnesses and their demonstratives?
THE COURT: Yes. That's what I was referring to with Mr. Bierig. At the conclusion of the proceedings

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today, you will notify St. Luke's as to who will be called to testify as rebuttal witnesses.
MS. DUKE: Correct, Your Honor.
THE COURT: All right. Very good.
Mr. Sonnenberg, is it, is being summoned?
MS. DUKE: He is. Mr. Powers is looking for him. He was out there about 20 minutes ago.
MR. POWERS: I will try to find him, Your Honor.
Found him.
THE COURT: Mr. Sonnenberg, would you please step before the clerk, be sworn as a witness, and then Ms. Gearhart will direct you from there.

GREG SONNENBERG,

having been first duly sworn to tell the whole truth, testified as follows:
THE CLERK: Please state your complete name and spell your name for the record.
THE WITNESS: Greg Sonnenberg, S-O-N-N-E-N-B-E-R-G.
THE COURT: You may inquire.
MS. DUKE: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. DUKE:
Q. Good afternoon, Mr. Sonnenberg.
A. **Hi.**

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Q. You were -- you are here under subpoena; correct?
A. **Yes.**
Q. And you worked at Saint Alphonsus up until the summer of this past year; right?
A. **That is correct.**
Q. And you were there --
THE COURT: Would you scoot a little closer to the microphone.
BY MS. DUKE:
Q. You were there for 13 years?
A. **Actually, close to 15.**
Q. Close to 15 years. And one of the roles that you had there was director of managed care; correct?
A. **That is correct.**
Q. And in that position, you were responsible for Saint Alphonsus's payor contracting; right?
A. **That's correct.**
Q. And as such, you had intimate knowledge of Saint Alphonsus' negotiating strategy with payors, including rates that Saint Alphonsus was able to get through various payors through its negotiations?
A. **That's correct.**
Q. And you were also the executive director of the PHO Advantage Care Network; right?
A. **That's correct.**

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Q. And that PHO Advantage Care Network ultimately became the Saint Alphonsus Health Alliance; right?
A. **That's correct.**
Q. Now, in July of 2012, you reached out to Jeff Taylor, who is the chief financial officer at St. Luke's, inquiring about leaving Saint Alphonsus and going to St. Luke's Health System; right?
A. **I did inquire. I don't know the exact date, but I did inquire and approached Jeff Taylor; that's correct.**
Q. Sure. And what you did is you sent him an email? Do you remember that?
A. **I don't recall that, either.**
Q. Let me show you Exhibit 1617.
What this is is an email -- is that -- it shouldn't be.
We can turn the screen off, Your Honor.
Exhibit 1617, which has been admitted, if you look there on that July 25, 2012, email, that's from you to Jeff. Do you see that there?
A. **I do.**
Q. Does that help refresh your recollection --
A. **Yes.**
Q. -- as to the time frame that you reached out to Mr. Taylor with respect to potentially working for St. Luke's?
A. **Yes.**

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Q. And Mr. Taylor indicates there to you that he does recall who you are and he is knowledgeable of what your current role is. You see that?
A. I do.
Q. And he also -- you wanted this to be a confidential communication; correct? You see there where he says, "I understand that this is confidential, and we'll be back in touch."
A. Yeah. Those are his words.
Q. Sure.
A. That's correct.
Q. But you weren't advertising to Saint Alphonsus that you were looking for a different job; right?
A. I wasn't advertising, but I wasn't keeping it a secret, either.
Q. You were then contacted by Mr. Taylor sometime later, weren't you?
A. Yes.
Q. And you ended up meeting with St. Luke's on several occasions between July of 2012 and ultimately June of 2013, when you were offered a position by -- by St. Luke's; correct?
A. That's correct.
Q. And one of the positions that you were looking to -- or part of what was being discussed with respect to

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you working for St. Luke's would be to assist with payor contracting negotiating; correct?
A. Probably more specifically, the title was senior director of PHO management and development. So in that capacity, there would probably be some involvement with contracting.
Q. There would be some involvement?
A. Yes.
Q. And the negotiations really between you and St. Luke's happened in the spring of 2012, leading up to June of 2012; correct?
A. To June of 2013?
Q. Sorry. June of 2013; you're correct.
A. Right.
Q. Let me rephrase that. So the negotiations between you and St. Luke's for a position were between sometime in the spring of 2013 up to about June of 2013?
A. Correct.
Q. And your deposition in this case was taken on April 18 of 2013; correct?
A. That's correct.
Q. And you certainly didn't advise Saint Alphonsus counsel that you were negotiating with St. Luke's related to a position; correct?
A. I believe that's correct.

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Q. And after that job -- excuse me. After that deposition, you were offered a job by St. Luke's; correct?
A. That's correct.
Q. Now, when you were communicating to St. Luke's related to looking to them to have a job, you sent your resumé to them; right?
A. That is correct.
Q. And let me just show you Exhibit 2064. Can you see that all right, Mr. Sonnenberg?
A. I can, yes.
Q. Does that look to be your resumé?
A. It is.
Q. And you prepared that in anticipation of reaching out to St. Luke's for employment; correct?
A. In anticipation of employment with anyone.
Q. Which included St. Luke's?
A. Which included St. Luke's.
Q. All right. Just wait one second.
All right. Thank you very much, Mr. Sonnenberg for your time.
THE COURT: Mr. Stein.
CROSS-EXAMINATION
BY MR. STEIN:
Q. Good afternoon, Mr. Sonnenberg.
A. Hi.

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Q. I don't know if you remember me. My name is Scott Stein. I took your deposition in April.
A. I do.
Q. Did you and I ever meet or speak or communicate in any way before I took your deposition?
A. Not to my knowledge, no.
Q. Did anyone from St. Luke's tell you what you should or shouldn't say in your deposition?
A. Nope.
Q. And did you understand that you were under oath at your deposition?
A. I did.
Q. And did you take that oath seriously?
A. I did.
Q. And did you comply with that oath?
A. I did.
Q. And if someone were to suggest perhaps that you were shading your testimony in a way to favor St. Luke's in order to potentially get a job with them, how would you respond to that?
A. I -- I did not.
Q. By the way, after you gave your deposition, you got a transcript of it; is that right? Do you recall reviewing it?
A. No, I do not recall that.

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Q. Let me ask this: Did anyone from Saint Al's ever say to you after your deposition, "You know, Greg, what you said isn't right," or "That's not accurate"?
A. Not to my knowledge.
Q. Do you still have good relationships with people at Saint Alphonsus?
A. I do.
Q. Did St. Luke's ever ask you to disclose any confidential information of Saint Alphonsus?
A. They did not.
Q. And have you ever done that?
A. I have not.
Q. Would you do that if St. Luke's asked you to?
A. No, I wouldn't.
Q. In the resumé that you prepared, did I hear you right, you were considering -- you weren't just looking at an opportunity with St. Luke's; there were other opportunities; is that right?
A. I was exploring other opportunities, that's correct.
Q. And was one of those additional opportunities a position in the -- a new position in the Saint Alphonsus Health Alliance?
A. Probably not at that time. They had already made that decision to move on. So I interviewed for that

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position before this period of time.
Q. Let me ask this: Do you recall that you provided a copy of the -- your same resumé to Blaine Petersen?
A. You know, I think I did, actually.
Q. And that would have been -- you would have given him the same resumé that you gave to St. Luke's?
A. It would have been.
Q. And did Mr. Petersen ever look at the resumé and say, "Greg, these things you're saying about Saint Al's payor contracting or the success we've had, those are just wrong"?
A. He never did.
MR. STEIN: I don't have any further questions, Your Honor.
THE COURT: Ms. Duke.
MS. DUKE: Nothing further, Your Honor. Thank you.
Thank you, Mr. Sonnenberg.
THE COURT: Counsel, this exhibit that was on the screen, the -- has that previously --
MS. DUKE: No, Your Honor. We objected and you sustained yesterday.
THE COURT: All right.
MR. STEIN: They sustained it. Your Honor, I would, however, like to make a representation -- and if we

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need to make a proffer -- that this was actually produced -- I'm sorry -- not this exhibit, but the document that was shown to Mr. Sonnenberg, his email to St. Luke's, was actually produced months in advance of his deposition. And I'm not sure what the right -- what the proper way to have that be on the record is.
THE COURT: We're referring to Exhibit 2064?
MR. STEIN: No. I think it was Exhibit 1617, the exhibit that was shown, the email.
THE COURT: Oh, the email.
MR. STEIN: Yes.
THE COURT: Well, I'm not sure what -- I mean, it's admitted. So I don't know -- what is it you want the record --
MR. STEIN: Simply the fact that it was produced. To the extent there was a suggestion that there was something being hidden from Saint Al's, this very document was produced months in advance of Mr. Sonnenberg's deposition.
THE COURT: Ms. Duke, do you have any reason to doubt that?
MS. DUKE: I don't have any reason to question that one way or the other.
THE COURT: All right. Well, I guess the statement is made for the record, and we will proceed from

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there.
Mr. Sonnenberg, you may step down. Thank you.
Counsel, we will start Monday morning at 8:30, go beyond 2:30 if need be, but it would be nice if we could be done fairly close to that time frame.
Also, I suspect Monday morning we'll have the plaintiffs formally rest, and the defense can make their motion for the record under Rule 52.
Mr. Wilson or Ms. Duke, was there something else?
MS. DUKE: I think both of us have something, but I beat him to it.
I know that Mr. Su talked to Mr. Metcalf with respect to exhibits that have still not been agreed to, and there are still negotiations occurring on both sides related to objected-to exhibits. And it's our understanding from Mr. Metcalf that we are to submit those at the time of the findings of fact. Is that fair?
THE COURT: Well, to the extent there is agreement. Where there is not agreement, I'll rule based upon the record that's been developed up to that point in time.
MS. DUKE: Sure.
THE COURT: Obviously, I need to see what the objection is and look at the record, but we will incorporate into our proposed -- our final findings and conclusions any

rulings that need to be made part of the record on any -- any exhibits that were moved into admission and the court had not had the opportunity to rule.

MS. DUKE: Right. We just want to make sure when we do, in fact, rest, that that's obviously an open issue --

THE COURT: Yes.

MS. DUKE: -- that would need to be addressed at a later time.

THE COURT: Correct.

Mr. Wilson.

MR. WILSON: Thank you, Your Honor. If I may just take a moment just for the record to renew our objection. One thing I did not do -- and at this point I will do -- with respect, is to move to strike any of the evidence that the defendants have presented with regard to the financial condition of Saltzer to the extent that that evidence improperly cloaks a failing or flailing firm defense as a remedy argument or somehow argues that unwinding Saltzer will be unduly costly or burdensome. And we would move to strike any such evidence in the testimony of Mr. Savage, Ms. Ahern, Dr. Patterson, or Dr. Kunz, Your Honor.

THE COURT: All right. In the court's prior ruling, we -- we filed a written decision setting forth the areas in which that economic circumstances of Saltzer and the details of the acquisition would still be relevant to

the court's decision on other issues. But it won't be considered in any way as part of either an argument concerning the remedy in this matter based upon some suggestion that the unwinding would be based upon events that occurred since the date of the court's prior decision that would in any way give the court a reason to not order a full and unlimited unwinding of the acquisition agreement. And, likewise, that the court would not consider any evidence to the extent that it might be proffered as part of some type of a failing defense -- excuse me -- failing firm defense, since that's been essentially waived by St. Luke's in this matter.

But the objection will be overruled based upon the court's prior ruling. All right. But limited in the fashion I have described. So it's absolutely clear that I am not allowing it in for either of the two purposes that Mr. Wilson has stated a concern about.

Counsel, is there anything else we need to take up now before we recess for the weekend? All right. We will start, then, at 8:30 Monday morning, hopefully finish by 2:30. If not, we will go just a little bit long if need be. We'll be in recess.

(Court recessed at 2:54 p.m.)

REPORTER'S CERTIFICATE

I, Tamara I. Hohenleitner, Official Court Reporter, County of Ada, State of Idaho, hereby certify:

That I am the reporter who transcribed the proceedings had in the above-entitled action in machine shorthand and thereafter the same was reduced into typewriting under my direct supervision; and

That the foregoing transcript contains a full, true, and accurate record of the proceedings had in the above and foregoing cause, which was heard at Boise, Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand October 31, 2013.

-s-
Tamara I. Hohenleitner
Official Court Reporter
CSR No. 619